

**EXHIBIT BB TO
CISNEROS DECLARATION
REDACTED VERSION**

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
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6 IN RE: HIGH-TECH EMPLOYEE)
7 ANTITRUST LITIGATION)
8) No. 11-CV-2509-LHK
9 THIS DOCUMENT RELATES TO:)
10 ALL ACTIONS.)
11 _____)
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13

14 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
15 VIDEO DEPOSITION OF JONATHAN ROSENBERG
16 March 13, 2013
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19 REPORTED BY: GINA V. CARBONE, CSR NO. 8249, RPR, CCRR
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10:09:53 1 working for Google?

10:09:54 2 A. Palm.

10:09:59 3 Q. And when did you work for Palm, approximately?

10:10:02 4 A. For approximately three months prior to the
10:10:05 5 start of my employment at Google.

10:10:15 6 Q. And was your title vice president of software?

10:10:20 7 A. It was vice president of something, I don't
10:10:22 8 recall whether or not it was specifically software.

10:10:25 9 Q. Okay.

10:10:30 10 THE VIDEOGRAPHER: Excuse me, Jonathan, could
10:10:33 11 you scoot over toward the court reporter a little.

10:10:36 12 THE WITNESS: Sure.

10:10:37 13 THE VIDEOGRAPHER: Thank you.

10:10:38 14 MR. HARVEY: Q. Could you describe,
10:10:39 15 generally, what your responsibilities were as a vice
10:10:41 16 president at Palm.

10:10:47 17 A. I was in charge of the features and functions
10:10:51 18 of the software and services that were integrated into
10:10:56 19 the Palm Pilot. So it was a traditional product
10:11:00 20 management position governing understanding of market
10:11:05 21 competition features and functions.

10:11:12 22 Q. Did you have a relationship with Edward
10:11:17 23 Colligan?

10:11:19 24 MR. RUBIN: Objection. Form.

10:11:21 25 MR. HARVEY: Q. Let me clarify. Actually,

10:11:25 1 give me a moment.

10:11:48 2 When you worked at Palm, did you have any
10:11:50 3 overlap with Edward Colligan where the two of you both
10:11:54 4 worked for Palm at the same time?

10:11:56 5 A. Possibly.

10:11:56 6 Q. But you are not sure sitting here today?

10:11:59 7 A. I'm not.

10:12:08 8 Q. Do you know Mr. Colligan personally?

10:12:10 9 A. I believe I have met him, but I couldn't pick
10:12:12 10 him out of a crowd.

10:12:14 11 Q. Do you recall the last time you met him?

10:12:16 12 A. No.

10:12:17 13 Q. Okay. Do you recall the last time you
10:12:19 14 communicated with him?

10:12:20 15 A. No.

10:12:29 16 Q. Okay. While you were at Palm, did you have any
10:12:32 17 responsibilities regarding recruiting or -- I'm sorry --
10:12:37 18 firmwide recruiting?

10:12:40 19 A. I did not.

10:12:42 20 Q. Did you have any responsibilities with respect
10:12:43 21 to firmwide compensation design?

10:12:48 22 A. My responsibilities were similar to my answer
10:12:50 23 that I gave you at Apple. I was responsible for the
10:12:53 24 implementation.

10:12:54 25 Q. Okay. When did you begin to work for Google?

10:13:12 1 A. February of 2002.

10:13:20 2 Q. And what was your first position?

10:13:24 3 A. Running product management.

10:13:28 4 Q. And that's running product management for the
10:13:30 5 entire company?

10:13:35 6 A. Correct.

10:13:40 7 Q. Approximately how long did you maintain that
10:13:45 8 primary responsibility at Google?

10:13:48 9 A. Nine years and a few months.

10:14:03 10 Q. Did you have any other primary responsibilities
10:14:05 11 in that role from when you started until -- well, let me
10:14:16 12 be more specific about it. Can you place, say, by month
10:14:22 13 or approximately when your responsibilities changed from
10:14:25 14 running product management for Google to something else?

10:14:28 15 A. Approximately April of 2011.

10:14:42 16 Q. And what were your primary responsibilities
10:14:44 17 beginning in April of 2011?

10:14:52 18 A. I became an advisor to the office of the CEO.
10:14:55 19 So I became an advisor to Larry, and my responsibilities
10:14:59 20 were not particularly well defined.

10:15:02 21 Q. Is that the role you currently have?

10:15:13 22 A. Yes, it is.

10:15:14 23 Q. Okay. While you were running product
10:15:18 24 management at Google, I believe you said from February
10:15:23 25 2002 through April of 2011, could you describe generally

10:15:27 1 what your primary responsibilities and job duties were.

10:15:33 2 A. My role was a functional role. The company was
10:15:37 3 organized functionally. So I ran the product
10:15:40 4 organization which interacted primarily with the
10:15:44 5 engineering organizations, marketing, sales, and
10:15:48 6 business development organizations. For some period the
10:15:53 7 traditional outbound marketing efforts -- product
10:15:56 8 marketing efforts were also under my purview.

10:16:04 9 The role of product management was similar to
10:16:06 10 the role of product management in many other technology
10:16:09 11 firms in the country, understanding the landscape -- the
10:16:12 12 competitive landscape, understanding the consumer and
10:16:17 13 market needs, and producing products and delivering the
10:16:22 14 features and functions that the market is interested in
10:16:25 15 against a time line that's consistent with the
10:16:28 16 management goals and strategy and plan for the company

10:16:34 17 Q. And any time during this period from February
10:16:36 18 2002 through April of 2011, was one of your primary
10:16:44 19 responsibilities firmwide recruiting?

10:16:53 20 A. I certainly participated in firmwide recruiting
10:16:56 21 efforts. I was not the lead recruiter for the firm.

10:17:04 22 Q. And was that true throughout the period, or was
10:17:06 23 it only true for a certain portion of that period?

10:17:15 24 A. Recruiting was always an important component of
10:17:17 25 my role.

10:17:18 1 Q. And the same question for firmwide compensation
10:17:23 2 design; was that ever an important part of your role or
10:17:26 3 any part of your role?

10:17:32 4 A. As a functional vice president, my role was
10:17:35 5 primarily to administer compensation policies. And as a
10:17:39 6 member of Eric's senior management team, I provided
10:17:45 7 input on compensation practices and policies from time
10:17:48 8 to time as the issues came up.

10:17:55 9 Q. And did you have any other responsibilities
10:17:57 10 concerning compensation apart from what you just
10:17:59 11 described?

10:18:02 12 A. Not that I can specifically think of.

10:18:05 13 Q. Okay. And throughout this period, from
10:18:26 14 February 2002 through April of 2011, the senior
10:18:33 15 management who reported directly to, in the beginning
10:18:39 16 Mr. Schmidt, that group was usually referred to as the
10:18:42 17 executive management group; is that correct?

10:18:46 18 A. That was one term by which we were referred,
10:18:49 19 yes.

10:18:51 20 Q. And let me see if I have this straight. I hope
10:18:54 21 I do. Was it referred to as the executive management
10:19:01 22 group until the term changed to the operating committee
10:19:09 23 in 2009?

10:19:11 24 A. Yes. That sounds familiar.

10:19:14 25 Q. And then in 2011 when Larry Page took over from

10:19:19 1 Eric Schmidt, it was sometimes referred to as Larry's
10:19:24 2 team; is that right?

10:19:25 3 A. That sounds right.

10:19:27 4 Q. Okay. And this group of individuals I'll refer
10:19:37 5 to as the EMG typically met every week on Mondays,
10:19:42 6 correct?

10:19:43 7 A. Traditionally we met on Mondays, yes.

10:19:47 8 Q. Did you typically attend those meetings?

10:19:48 9 A. Almost -- it was my highest priority to attend
10:19:51 10 those meetings relative to anything else that I was
10:19:54 11 doing. So generally, yes.

10:19:56 12 Q. So if you were -- if you were in the area
10:20:00 13 geographically at the time, you made it a priority to
10:20:04 14 attend those meetings every Monday?

10:20:17 15 A. Absolutely.

10:20:53 16 (Reporter interruption.)

10:21:01 17 MR. HARVEY: Q. When you switched to an
10:21:07 18 advisor to Larry Page, I believe you said that the
10:21:11 19 responsibilities weren't defined very well; is that
10:21:13 20 correct?

10:21:14 21 A. Uh-huh.

10:21:15 22 Q. What did you typically do in that capacity as
10:21:17 23 an advisor to Mr. Page?

10:21:21 24 A. Well, I started by taking a long vacation. I
10:21:29 25 then returned and began to look for areas in the company

10:28:19 1 Mr. Campbell about his testimony?

10:28:20 2 MR. RUBIN: Objection. Form.

10:28:22 3 THE WITNESS: I did not.

10:28:23 4 MR. HARVEY: Q. I just have to run through

10:28:24 5 it quickly.

10:28:25 6 Did you speak with Ms. Brown about her

10:28:27 7 testimony?

10:28:27 8 A. I did not.

10:28:28 9 MR. RUBIN: Objection. Form.

10:28:29 10 THE WITNESS: All right.

10:28:30 11 MR. RUBIN: We could have a standing objection

10:28:31 12 if we're going to --

10:28:32 13 THE WITNESS: He's going to object in all, and

10:28:33 14 my answer is going to be "I did not." But I'm happy to

10:28:36 15 keep going.

10:28:37 16 MR. RUBIN: So objection. Form.

10:28:38 17 We can have a standing objection each name,

10:28:39 18 given the question --

10:28:40 19 MR. HARVEY: There are only two more.

10:28:41 20 MR. RUBIN: Okay.

10:28:42 21 MR. HARVEY: Q. Did you speak to

10:28:43 22 Mr. Eustace about his testimony?

10:28:45 23 MR. RUBIN: Objection. Form.

10:28:46 24 THE WITNESS: I did not.

10:28:47 25 MR. HARVEY: Q. Did you speak to

10:28:48 1 Mr. Kordestani about his testimony?

10:28:50 2 MR. RUBIN: Objection. Form.

10:28:51 3 THE WITNESS: I did not.

10:28:57 4 MR. HARVEY: Thank you.

10:29:10 5 Q. Do you recall appearing at an event in
10:29:13 6 Half Moon Bay called the Think Tomorrow Today conference
10:29:16 7 on June 6th, 2008?

10:29:21 8 A. I recall attending many events at that
10:29:24 9 particular venue, and it was my custom to go to these
10:29:28 10 events. I don't specifically recall the Think Tomorrow
10:29:31 11 event.

10:29:34 12 Q. Do you recall, on that date at that event,
10:29:40 13 being interviewed by Bill Campbell on stage in front of
10:29:42 14 an audience?

10:29:45 15 A. I do recall being interviewed by Bill Campbell
10:29:48 16 at an event.

10:29:53 17 Q. Okay. So this event happened to be videotaped,
10:29:56 18 and it's on YouTube. So I have the video with me today,
10:30:00 19 and I'm going to introduce a recording of the video as
10:30:11 20 Plaintiffs' Exhibit 1750, I believe, so that will just
10:30:12 21 be part of the record.

10:30:13 22 (Whereupon, Exhibit 1750 was marked for
10:30:13 23 identification.)

10:30:14 24 MR. HARVEY: Q. I have the YouTube video
10:30:15 25 on this laptop.

10:30:17 1 A. Okay.

10:30:18 2 Q. So I'm going to start it. And if you could,
10:30:23 3 for however long you need, just until you can verify
10:30:25 4 that this video is, in fact, a video of that event, and
10:30:29 5 the individuals on stage are, in fact, you and
10:30:32 6 Mr. Campbell.

10:30:35 7 A. Sure.

10:30:43 8 MR. HARVEY: Is there anything we need to do?

10:30:49 9 (Discussion off the record.)

10:30:51 10 THE WITNESS: I don't think it will be
10:30:53 11 particularly difficult for me to verify that that's me
10:30:56 12 and Mr. Campbell, so....

10:30:57 13 MR. HARVEY: Q. Can you do it without me
10:30:57 14 even playing it?

10:30:58 15 A. Yes. That's me and Mr. Campbell.

10:31:01 16 Q. That makes it easier.

10:31:01 17 I'm going to play a couple of segments and then
10:31:03 18 I'll ask you about them. The first one, let's see if I
10:31:06 19 can do this, starts at 2 minutes and 40 seconds in. Let
10:31:19 20 me try to get there.

10:31:22 21 A. Good chance I can get there faster than you.

10:31:24 22 Q. I have no doubt that's true.

10:31:31 23 All right. Here we go.

10:31:39 24 [video played]

10:31:40 25 "And I sort of felt bad because, you know, he

10:31:42 1 was obviously a smart guy and he had been
10:31:43 2 thrown out. So I ran out, and Riley said,
10:31:46 3 well, if you are advocating how Google is, why
10:31:49 4 don't you come work for us. I sort of thought
10:31:52 5 about it. I had this kind of nice cushy job as
10:31:55 6 senior vice president of [inaudible] home. And
10:31:57 7 I said, well, your search engine is really
10:31:59 8 cool, but how are you going to make money. And
10:32:02 9 Larry said to me, and it was the spring of
10:32:06 10 1999, he said search is what" --

10:32:08 11 MR. HARVEY: Q. Okay. Did you first

10:32:18 12 consider working for Google as a result of the
10:32:21 13 conversation you described here with Larry Page
10:32:25 14 talking to you directly about the possibility?

10:32:28 15 A. I'm not sure I understand the question.

10:32:30 16 Q. Sure. Part of the video I played is you
10:32:35 17 describing a conversation you had with Larry Page about
10:32:42 18 working for Google, correct?

10:32:45 19 A. Yes.

10:32:45 20 Q. And I'll just ask the question directly. I'll
10:32:48 21 disconnect it from the video.

10:32:53 22 Did you first consider working for Google when
10:32:55 23 Larry Page asked you to consider that?

10:32:58 24 A. Hard to say.

10:33:03 25 Q. Did you -- well, how did it happen that you

10:33:08 1 moved from Palm to Google in that -- I'll be more
10:33:12 2 specific -- more specific about it.

10:33:17 3 Did you apply or did someone from Google
10:33:19 4 recruit you?

10:33:20 5 MR. RUBIN: Objection. Form.

10:33:21 6 THE WITNESS: I was recruited to Google long
10:33:23 7 before I was at Palm. This discussion that I'm
10:33:25 8 referencing took place two years prior.

10:33:31 9 MR. HARVEY: Q. Oh, I see. And was that
10:33:34 10 conversation with Mr. Page the first conversation
10:33:36 11 that occurred about the possibility of you working
10:33:39 12 for Google?

10:33:40 13 A. It may have been, it may not. I don't recall
10:33:42 14 the first conversation.

10:33:45 15 Q. Do you recall that the first conversation was
10:33:47 16 initiated by someone at Google?

10:33:51 17 A. First conversation was initiated by a
10:33:54 18 recruiter.

10:33:58 19 Q. And that was a recruiter at Google?

10:34:01 20 A. No.

10:34:03 21 Q. Who was the recruiter?

10:34:05 22 A. The recruiter was Stephen Combs.

10:34:08 23 Q. And who did Mr. Combs work for?

10:34:11 24 A. I believe he worked for a company called
10:34:13 25 Juntunen and Combs. His partner was somebody Juntunen.

10:34:17 1 But by that point he might have been working for a
10:34:19 2 company called the Bridgegate Group.

10:34:22 3 Q. Was this company a company that specialized in
10:34:25 4 recruiting?

10:34:26 5 A. Yes.

10:34:27 6 Q. Did Google retain that company to recruit you?

10:34:29 7 A. I believe they did.

10:34:30 8 Q. Okay. Did you submit an application to Google
10:34:37 9 in advance of being contacted by Mr. Combs?

10:34:44 10 A. I did not.

10:34:45 11 Q. Okay. And who did you -- I'm sorry. Strike
10:34:51 12 that.

10:34:52 13 What company did you work for at the time that
10:34:54 14 you were contacted by Mr. Combs?

10:34:58 15 A. The @Home Network.

10:35:00 16 (Reporter clarification.)

10:35:01 17 THE WITNESS: The @Home Network. At sign,
10:35:04 18 H-O-M-E, capital N, Network.

10:35:09 19 MR. HARVEY: Q. Okay. I'm going to play
10:35:11 20 one other segment from this, which I believe starts
10:35:16 21 at approximately 19 minutes and 25 seconds in.

10:35:36 22 I'm going to play about two minutes of video
10:35:38 23 and then I'll ask you a couple of questions about your
10:35:39 24 statements.

10:35:43 25 [video played]

10:35:43 1 "...who wants to be an engineering trainer.

10:35:51 2 So take one click deeper and talk about the

10:35:52 3 recruiting process.

10:35:54 4 What I first experienced with the recruiting

10:35:54 5 process -- it was cute. I showed up my first

10:35:55 6 day and there were six people in my group;

10:35:58 7 Susan, Sala (phonetic) and Marissa, who you

10:36:01 8 probably see a lot of press about were there.

10:36:03 9 And they were doing recruiting. So I was,

10:36:05 10 like, you're all sitting there with your

10:36:08 11 laptops open. What the hell are you doing?

10:36:09 12 The answer is, we're looking for good people.

10:36:11 13 I'm, like, where? They're, like, we're using

10:36:14 14 Google. I said, well, don't you have

10:36:16 15 recruiters to do that? Don't lots of people

10:36:18 16 want to work here? Aren't they all applying?

10:36:20 17 And they said, no, we don't want the people who

10:36:24 18 are applying. We want the best people in the

10:36:26 19 world. I said, well, how do you find them?

10:36:28 20 They said, well, we're looking for generalists,

10:36:30 21 and we all just got out of college. So we know

10:36:34 22 the awards at all of our colleges. At Stanford

10:36:37 23 there is like a Boothe prize for writing. If

10:36:38 24 you need a marketing person, get the person

10:36:40 25 with the Boothe prize. So they're literally

10:36:44 1 running searches. And they all know their
10:36:49 2 colleges well. They all went to big schools.
10:36:51 3 I went to, like, little, rinky-dink Claremont
10:36:53 4 McKenna College in Southern California. There
10:36:54 5 is, like, 200 graduates a year. So I type in
10:36:58 6 suma cum laude Claremont McKenna College, and I
10:36:58 7 find two people and, you know, I try to
10:37:00 8 convince them to join Google. And then I
10:37:03 9 realize I'm not adding any value. Every week
10:37:05 10 I'm showing up in this room, and they're
10:37:08 11 running searches, finding great people, and
10:37:10 12 giving the great people to the recruiters and
10:37:11 13 saying, just send these -- just tell these
10:37:13 14 people there is a plane ticket to Mountain View
10:37:15 15 and we want to hire them. So I decided that I
10:37:20 16 needed to add some value because I was busy
10:37:22 17 arguing with Larry about the product lines. He
10:37:25 18 didn't think I was a useful executive. So I
10:37:29 19 thought, well, I'll try a different search. So
10:37:32 20 I discovered there was an award at India
10:37:32 21 Institute of Technology called the Gold Medal
10:37:32 22 Award. And I ran a search and I found four
10:37:32 23 people, Prashan, Sihndar, Deep, (phonetic) who
10:37:32 24 won the Gold Medal Award at India Institute of
10:37:32 25 Technology. And I said to the recruiter, call

10:37:32 1 these people and explain to them why they
10:37:32 2 should work at Google. And if they don't agree
10:37:53 3 with you, let me explain it to them. And so --
10:37:56 4 and it worked. Like, suddenly we hired a few
10:37:59 5 people. And so the recruiting dynamic is
10:38:04 6 different. It's not the adverse selection of
10:38:06 7 the people that want you, it's the people that
10:38:07 8 you want. The next thing, which is really
10:38:10 9 different" --

10:38:13 10 MR. RUBIN: And I'll just object to form.

10:38:14 11 Rule 106.

10:38:17 12 MR. HARVEY: Q. Okay. There are a couple
10:38:22 13 of statements you made in that segment. And I'm
10:38:24 14 just going to repeat them to you because it's
10:38:26 15 easier, given the technology, for me just to say it,
10:38:30 16 and then I'll ask you to explain kind of what you
10:38:32 17 meant by that statement.

10:38:33 18 A. Okay.

10:38:34 19 Q. The first is, we don't want the people who are
10:38:38 20 applying, we want the best people in the world.

10:38:42 21 MR. RUBIN: Objection. Form.

10:38:43 22 MR. HARVEY: Q. What did you mean by that
10:38:45 23 statement?

10:38:46 24 MR. RUBIN: Sorry. I thought you were done,
10:38:47 25 Dean, I'm sorry.

10:38:49 1 Objection. Form.

10:38:55 2 THE WITNESS: I'm not sure how to provide
10:38:58 3 additional clarification beyond what I said.

10:39:03 4 MR. HARVEY: Q. Okay. The second
10:39:07 5 statement that I want to ask you about is, it's not
10:39:10 6 the adverse selection of the people that want you,
10:39:14 7 it's the people that you want. Could you explain
10:39:17 8 what you meant by that statement.

10:39:19 9 MR. RUBIN: Objection. Form.

10:39:32 10 THE WITNESS: Repeat the statement.

10:39:34 11 MR. HARVEY: Q. Sure. It's not the
10:39:35 12 adverse selection of the people that want you, it's
10:39:39 13 the people that you want.

10:39:42 14 MR. RUBIN: Objection. Form.

10:39:45 15 THE WITNESS: I guess you would have to be more
10:39:46 16 specific about what portion of that statement you want
10:39:48 17 me to clarify.

10:39:50 18 MR. HARVEY: Q. Sure. Why don't we break
10:39:51 19 it up. When you used the phrase "adverse selection"
10:39:55 20 in the context of individuals applying to Google,
10:39:59 21 what did you mean by that?

10:40:08 22 A. That there is a bias related to the set of
10:40:13 23 people who apply as opposed to those who don't.

10:40:17 24 Q. And what is that bias?

10:40:18 25 A. That the people who apply, on average, aren't

10:40:21 1 as good.

10:40:24 2 Q. And Google wanted to hire the best people it
10:40:27 3 could?

10:40:28 4 MR. RUBIN: Objection. Form.

10:40:30 5 MR. HARVEY: Q. Correct?

10:40:31 6 A. As a general rule, Google always wanted to hire
10:40:39 7 the best people it could.

10:40:45 8 Q. Okay. I think that's it for the video portion
10:40:47 9 of the deposition.

10:40:56 10 MR. RUBIN: At a break, Dean, can we get a
10:40:57 11 copy? Do you have another --

10:41:00 12 MR. HARVEY: I can give it to you right now.

10:41:02 13 MR. RUBIN: Great. Thank you.

10:41:45 14 MR. HARVEY: Q. In your experience at
10:41:46 15 Google, would you say that the typical employee knew
10:41:51 16 what comparable employees were being paid at Google?

10:41:54 17 MR. RUBIN: Objection. Form.

10:41:57 18 THE WITNESS: I don't know.

10:41:59 19 MR. HARVEY: Q. You don't have an opinion
10:42:00 20 one way or another?

10:42:02 21 A. I don't.

10:42:02 22 MR. RUBIN: Objection. Form.

10:42:10 23 MR. HARVEY: Q. Did you think it was
10:42:11 24 important not to share compensation ranges,
10:42:19 25 compensation information about employees generally

10:42:20 1 with the wider population at Google?

10:42:23 2 MR. RUBIN: Objection. Form.

10:42:28 3 THE WITNESS: I guess you have to -- can you --

10:42:30 4 I don't understand exactly what you are asking.

10:42:32 5 MR. HARVEY: Q. Sure. So let me take a

10:42:34 6 step back for a moment.

10:42:36 7 You had information about what various

10:42:39 8 engineers who worked for you were getting paid, correct?

10:42:43 9 A. I did.

10:42:44 10 Q. And that information was superior, in many

10:42:47 11 ways, to the information that the engineers themselves

10:42:51 12 had about what their colleagues were getting paid,

10:42:54 13 correct?

10:42:54 14 MR. RUBIN: Objection. Form.

10:43:01 15 THE WITNESS: I had information that other

10:43:02 16 people did not.

10:43:03 17 MR. HARVEY: Q. Was it important to you to

10:43:05 18 keep that information from the wider population at

10:43:10 19 Google.

10:43:11 20 MR. RUBIN: Objection. Form.

10:43:16 21 THE WITNESS: As a general rule, salary

10:43:18 22 information is something which is kept confidential, and

10:43:22 23 I -- I generally administered that policy.

10:43:28 24 MR. HARVEY: Q. Do you agree with that

10:43:29 25 policy?

11:30:29 1 a chance to read through her email?

11:30:33 2 A. I have.

11:30:37 3 Q. And there is a rule No. 2 there starting on
11:30:40 4 page 2, where she says that, "If there is a list of
11:30:48 5 strategic partners with whom we will compete for talent,
11:30:50 6 but we want to be as transparent about it as possible,
11:30:54 7 then we make a different rule, which says: We will
11:30:57 8 engage in interviews with these individuals. But we
11:31:00 9 will inform them ONCE they have a formal offer from
11:31:03 10 Google, that their employer needs to be given an
11:31:07 11 opportunity to counter."

11:31:11 12 Do you recall considering this rule at the time
11:31:15 13 in response to Mr. Shader's request?

11:31:20 14 A. I do not.

11:31:25 15 Q. Do you recall why, in rule No. 2 as Ms. Brown
11:31:32 16 describes it, Google would inform the current employer
11:31:36 17 only after Google had extended a formal offer to the
11:31:41 18 candidate?

11:31:42 19 MR. RUBIN: Objection. Form.

11:31:52 20 THE WITNESS: I don't.

11:31:54 21 MR. HARVEY: Q. Sitting here today, apart
11:31:55 22 from this document, do you have any views on why
11:32:00 23 that might be the right thing to do?

11:32:02 24 MR. RUBIN: Objection. Form.

11:32:08 25 THE WITNESS: I'm sure I could come up with a

11:32:09 1 number of reasons. One primary reason would be the
11:32:11 2 confidentiality of the candidate.

11:32:14 3 MR. HARVEY: Q. And could you elaborate on
11:32:15 4 that a little bit. What confidentiality concern are
11:32:19 5 you describing?

11:32:21 6 A. A candidate might not want his employer to know
11:32:24 7 that he's interviewing with another firm.

11:32:26 8 Q. And why might a candidate not want his or her
11:32:31 9 employer to know that he's interviewing with another
11:32:33 10 firm, or she's interviewing with another firm?

11:32:37 11 A. I'm sure there are a whole host of relatively
11:32:40 12 obvious reasons that any reasonable person can think of.

11:32:43 13 Q. And what would those obvious reasons be?

11:32:47 14 MR. RUBIN: Objection. Form.

11:32:57 15 THE WITNESS: Can you be specific and give me
11:32:59 16 some possibilities? I can tell you whether I agree or
11:33:01 17 disagree with them rather than just guessing.

11:33:03 18 MR. HARVEY: I don't want you to guess, but you
11:33:04 19 just said that there were some obvious reasons. And so
11:33:07 20 I'd like to have you list what those obvious reasons
11:33:11 21 are.

11:33:12 22 MR. RUBIN: Objection. Form.

11:33:15 23 THE WITNESS: One would be that they could be
11:33:16 24 perceived as disloyal.

11:33:21 25 MR. HARVEY: Q. Are there any others?

11:33:24 1 A. Again, I can't make an exhaustive list for you.
11:33:28 2 I think as a general rule, it's obvious why employees
11:33:31 3 who are looking might not want their employers to know
11:33:34 4 that they're looking.

11:33:41 5 Q. Okay. Why don't we stick with the first reason
11:33:45 6 you gave, that the employer may be concerned that -- I'm
11:33:49 7 sorry -- that the employee may be concerned that his or
11:33:52 8 her employer would perceive that person as disloyal.

11:34:02 9 In that circumstance, where an employer
11:34:05 10 discovers that an employee is interviewing at another
11:34:09 11 company, why would that employer perceive that as a
11:34:16 12 disloyal act?

11:34:18 13 MR. RUBIN: Objection. Form.

11:34:23 14 THE WITNESS: Again, there's lots of reasons.
11:34:27 15 I don't -- I guess I don't understand exactly what you
11:34:29 16 are asking.

11:34:31 17 MR. HARVEY: Q. Well, I'm basically asking
11:34:33 18 you to expand on the point you've already made,
11:34:36 19 which is that an obvious reason why an employee may
11:34:39 20 not want to know -- or may not want their employer
11:34:43 21 to know that they're interviewing is that they could
11:34:46 22 be perceived as disloyal. So I'm asking why is
11:34:49 23 that? Why is that an obvious concern?

11:34:56 24 MR. RUBIN: Objection. Form.

11:35:00 25 THE WITNESS: Because employees have

11:35:02 1 confidential information, and firms compete with each
11:35:06 2 other and often don't want confidential information
11:35:10 3 going from one company to another through an employee.

11:35:17 4 MR. HARVEY: Q. What about the disloyalty
11:35:20 5 piece? What would be disloyal about interviewing
11:35:23 6 with other companies?

11:35:25 7 MR. RUBIN: Objection. Form.

11:35:27 8 THE WITNESS: You would have to ask the manager
11:35:28 9 of the employee what their view of disloyalty is, but
11:35:33 10 I'm sure that many employees perceive that their
11:35:35 11 managers might think it disloyal, and it therefore not
11:35:38 12 to be in their self-interest to have their managers be
11:35:41 13 aware of the fact that they're looking for other
11:35:43 14 employment.

11:35:46 15 MR. HARVEY: Q. And it's fair to say that
11:35:49 16 when an employer learns that an employee is looking
11:35:54 17 around to work for another employer, that this
11:35:59 18 disloyalty concern could result in negative
11:36:04 19 consequences to the career of that employee should
11:36:07 20 that employee choose to stay at the current
11:36:09 21 employer?

11:36:09 22 MR. RUBIN: Objection. Form.

11:36:12 23 THE WITNESS: It's a pretty complex statement.
11:36:15 24 I'm not sure I can speculate on the generality as to
11:36:21 25 whether or not it's true for different people in

11:36:22 1 different positions.

11:36:26 2 MR. HARVEY: Q. And I'm not asking you to
11:36:29 3 be specific about a particular person or to get into
11:36:32 4 anyone else's mind.

11:36:34 5 I guess what I'm asking is for you to rely on
11:36:37 6 your own knowledge, your own experience in the industry,
11:36:40 7 your own experience managing people for many years,
11:36:42 8 managing large groups of people. Do you have an
11:36:47 9 understanding of the phenomenon that you earlier
11:36:49 10 described as an obvious one that an employer may view an
11:36:55 11 employee looking around for jobs elsewhere as an act of
11:37:01 12 disloyalty?

11:37:02 13 MR. RUBIN: Objection. Form.

11:37:06 14 THE WITNESS: I believe some people would view
11:37:08 15 that news negatively, yes.

11:37:12 16 MR. HARVEY: Q. Would you have viewed that
11:37:14 17 news negatively if one of your employees were
11:37:16 18 shopping around for offers from other companies?

11:37:22 19 A. It would very much depend on the employee and
11:37:24 20 the specific situation. In some cases yes, and in some
11:37:27 21 cases, no.

11:37:35 22 Q. Okay. Back to the document. If we could go to
11:37:47 23 your email in response to Ms. Brown's email on the first
11:37:52 24 page. It looks like you added Eric Schmidt to the
11:38:02 25 conversation; is that correct?

11:38:06 1 A. If this is the full thread and there's no other
11:38:09 2 pieces in between, then that statement is correct.

11:38:13 3 Q. Okay. And you begin your email by saying, "The
11:38:18 4 only company I know that we ever had a non-poaching
11:38:22 5 policy with was Yahoo and we dropped that policy
11:38:27 6 recently."

11:38:27 7 Sitting here today, do you recall that
11:38:30 8 non-poaching policy with respect to Yahoo?

11:38:33 9 A. I do not.

11:38:33 10 Q. You don't recall anything about it?

11:38:34 11 A. I do not.

11:38:35 12 Q. You don't recall whether the policy existed or
11:38:38 13 not?

11:38:40 14 A. I do not.

11:38:40 15 MR. RUBIN: Objection. Form.

11:38:50 16 MR. HARVEY: Q. The next sentence says, "I
11:38:51 17 agree that the way to handle this is for you to
11:38:54 18 formalize a policy but I think rule No. 2 is more
11:38:58 19 appropriate for us."

11:39:04 20 Do you recall why you thought the way to handle
11:39:06 21 the situation was for Ms. Brown to formalize a policy?

11:39:10 22 A. I do not.

11:39:12 23 Q. Do you recall why you thought rule No. 2 was
11:39:15 24 more appropriate for Google?

11:39:19 25 A. I recall that in general, I preferred rules

11:39:24 1 that restricted us less than rules that restricted us
11:39:27 2 more.

11:39:29 3 Q. And when you say restricted us, you mean
11:39:31 4 Google's ability to recruit from wherever it wanted,
11:39:36 5 correct?

11:39:38 6 A. I --

11:39:39 7 Q. I'm sorry. Let me just interrupt you. I
11:39:41 8 apologize. It was a very poorly phrased question. Let
11:39:44 9 me ask a better one -- or try to ask a better one.

11:39:48 10 When you used the word "restricted," you were
11:39:52 11 referring to limitations on Google's ability to recruit,
11:39:55 12 correct?

11:39:56 13 MR. RUBIN: Objection. Form.

11:40:04 14 THE WITNESS: Again, I'm simply referring to
11:40:07 15 any degree to which -- any degree to which, as a
11:40:15 16 manager, I have fewer options as opposed to more
11:40:18 17 options. More options is always better.

11:40:29 18 MR. HARVEY: Q. And so the kinds of
11:40:31 19 restrictions that are being discussed here, such as
11:40:34 20 what you refer to as a no-poaching policy,
11:40:39 21 restrictions of those kind would have limited your
11:40:42 22 options, correct?

11:40:51 23 A. It would depend on what was agreed to with
11:40:53 24 respect to such a policy. In theory, such -- in
11:40:56 25 theory -- in theory, some policies could limit your

11:41:03 1 options relative to other policies if you adhered to
11:41:09 2 them.

11:41:09 3 Q. So suppose, in this email string, you had
11:41:11 4 responded to Mr. Shader's request by saying something
11:41:15 5 like, great idea. Let's agree that our recruiting teams
11:41:17 6 will not target each other's employees, say.

11:41:22 7 That -- that policy, that agreement, would have
11:41:27 8 limited Google's options in terms of its ability to
11:41:31 9 recruit employees, correct?

11:41:33 10 MR. RUBIN: Objection. Form.

11:41:36 11 THE WITNESS: I'm not aware of any such
11:41:38 12 agreement, so I'm not sure how to answer your question.

11:41:43 13 MR. HARVEY: Q. All right. We'll get to
11:41:44 14 this later.

11:41:59 15 If we go to the top of the document,
11:42:03 16 Mr. Schmidt chimes in and says, "From a purely selfish
11:42:08 17 Google position our policy should be to have 'no rule'."
11:42:15 18 Do you see that?

11:42:16 19 A. I do.

11:42:18 20 Q. Do you have an understanding of why -- well,
11:42:23 21 first of all, do you agree with that statement?

11:42:27 22 MR. RUBIN: Objection. Form.

11:42:33 23 THE WITNESS: As a manager, I generally
11:42:36 24 preferred fewer rules to less.

11:42:38 25 MR. HARVEY: Q. And why is that?

11:42:39 1 A. For the reason I gave before. More options is
11:42:42 2 preferred to fewer.

11:42:44 3 Q. And why did you have that preference in the
11:42:51 4 context of recruiting employees?

11:42:58 5 A. Because a large portion of my job focused on
11:43:00 6 recruiting people, and I wanted to maximize the success
11:43:05 7 of my recruiting efforts.

11:43:16 8 Q. And how would rules of the kind contemplated in
11:43:19 9 this document have potentially limited the success of
11:43:26 10 your recruiting efforts?

11:43:29 11 MR. RUBIN: Objection. Form.

11:43:30 12 THE WITNESS: You have to give me a specific
11:43:32 13 example.

11:43:35 14 MR. HARVEY: Q. Well, why don't we go with
11:43:36 15 the example of Mr. Shader's request, which he says,
11:43:40 16 "I would appreciate it if you could ask your
11:43:43 17 recruiting teams not to target Good employees."

11:43:46 18 Suppose Google agreed with that request. How
11:43:50 19 would that rule limit your ability to be successful in
11:43:56 20 the context of recruiting?

11:43:59 21 MR. RUBIN: Objection. Form.

11:44:01 22 THE WITNESS: It doesn't say that Google agreed
11:44:02 23 to that.

11:44:03 24 MR. HARVEY: Q. Right. And I'm not trying
11:44:04 25 to get you to say that Google did, because that's

11:44:07 1 not my point. My point is just to try to understand
11:44:10 2 how, you know -- at this time it appears that Google
11:44:14 3 is considering different options. And what I'm
11:44:20 4 trying to understand is what the potential
11:44:24 5 consequences would be of the possibilities being
11:44:26 6 considered.

11:44:27 7 And one possibility, presumably, is what
11:44:30 8 Mr. Shader requests in the email that starts this
11:44:32 9 conversation, which is, that Google would agree not to
11:44:36 10 recruit Good employees.

11:44:37 11 So my question is, what would be the
11:44:38 12 consequence of that if -- and I understand that you are
11:44:42 13 not saying that Google did -- but if Google agreed to
11:44:46 14 Mr. Shader's request?

11:44:47 15 MR. RUBIN: Objection. Form.

11:44:53 16 THE WITNESS: If the company agreed not to hire
11:44:55 17 an individual and then chose to adhere to that, then
11:44:59 18 they couldn't hire the individual.

11:45:02 19 MR. HARVEY: Q. Okay. And a limit on your
11:45:04 20 ability to hire individuals would potentially limit
11:45:09 21 your ability to be successful in your efforts to
11:45:13 22 recruit the best candidates for Google, correct?

11:45:16 23 MR. RUBIN: Objection. Form.

11:45:24 24 THE WITNESS: I think I've answered that
11:45:25 25 question.

11:52:13 1 understand this in the same way?

11:52:16 2 MR. RUBIN: Objection. Form.

11:52:17 3 THE WITNESS: You'd have to ask Dr. Schmidt.

11:52:23 4 MR. HARVEY: Q. Well, you are on this
11:52:24 5 email, and I take it you don't remember, but you may
11:52:27 6 have had conversations with him on this topic at the
11:52:30 7 time or throughout the years, and you certainly know
11:52:35 8 Mr. Schmidt much better than I do. When you
11:52:39 9 received this document, did you have an
11:52:40 10 understanding of what he meant here?

11:52:44 11 MR. RUBIN: Objection. Form.

11:52:53 12 THE WITNESS: I think I added him to the thread
11:52:55 13 because I think he agreed with me. That we wanted to
11:52:58 14 have as few rules as possible. And insofar as we wanted
11:53:05 15 to be sensitive, there were companies that we did
11:53:09 16 business with, like Good Technologies which we were
11:53:13 17 working on a number of things with. And when we wanted
11:53:16 18 to maintain good relations, it was a good idea to be
11:53:19 19 sensitive or careful, unless for some reason there were
11:53:23 20 some reasons not to. And I don't know what he's
11:53:29 21 suggesting those reasons might or might not be.

11:53:43 22 MR. HARVEY: Q. Do you recall whether you
11:53:45 23 discussed with him at the time, or whether it was
11:53:47 24 part of this conversation, that if Google were to
11:53:52 25 restrict its recruiting activities, that that

11:53:55 1 restriction would only make sense if the restriction
11:53:58 2 were mutual with the other company?

11:54:01 3 A. I do not.

11:54:03 4 Q. Okay. Do you recall whether the issue of the
11:54:07 5 restriction being contractually mandated came up apart
11:54:11 6 from this email?

11:54:12 7 A. No, I do not.

11:54:14 8 Q. Okay. Oh, one other question on this document
11:54:24 9 before we move on. Something I skipped over. If you go
11:54:27 10 back to the second email on this page that you wrote.

11:54:33 11 A. Uh-huh.

11:54:33 12 Q. And if you look to the second paragraph, and
11:54:35 13 the end of that paragraph, the last sentence, where you
11:54:38 14 said, "I do agree with your caveat that we never get
11:54:42 15 into bidding wars as a result of Rule number 2."

11:54:47 16 What did you mean by "bidding wars"?

11:54:54 17 A. It's not clear.

11:55:00 18 Q. Do you have an understanding, sitting here
11:55:02 19 today, of what the term bidding wars means in the
11:55:05 20 context of recruiting and hiring?

11:55:07 21 MR. RUBIN: Objection. Form.

11:55:18 22 THE WITNESS: In this context, my best guess
11:55:20 23 would be that it means a dynamic of iterative multiple
11:55:25 24 counteroffers.

11:55:26 25 MR. HARVEY: Q. And that's undesirable

11:55:28 1 because at the end of that process, the eventual
11:55:31 2 compensation could be quite high, correct?

11:55:33 3 MR. RUBIN: Objection. Form.

11:55:35 4 THE WITNESS: There are a number of reasons why
11:55:36 5 it could be undesirable.

11:55:40 6 MR. HARVEY: Q. Is an increase in the
11:55:45 7 eventual compensation one of the reasons?

11:55:47 8 MR. RUBIN: Objection. Form.

11:55:48 9 THE WITNESS: It could be.

11:55:53 10 MR. HARVEY: Q. Sitting here today, do you
11:55:54 11 have a view on whether it is, in fact, a reason?

11:55:57 12 MR. RUBIN: Objection. Form.

11:55:59 13 THE WITNESS: I cannot say specifically what
11:56:01 14 motivated me to write that sentence.

11:56:07 15 MR. HARVEY: Q. And what I'm asking about
11:56:09 16 now -- you can kind of put the document aside. Just
11:56:13 17 sitting here today, and given your understanding of
11:56:18 18 bidding wars in the context of recruiting and
11:56:21 19 hiring --

11:56:22 20 A. Uh-huh.

11:56:22 21 Q. -- is one of the reasons why bidding wars are
11:56:26 22 undesirable is that the compensation for the individual
11:56:31 23 in question may be higher than you would otherwise want
11:56:35 24 it to be?

11:56:36 25 MR. RUBIN: Objection. Form.

11:56:46 1 THE WITNESS: I guess you have to break the
11:56:47 2 question down and help me understand what you are
11:56:48 3 asking.

11:56:49 4 MR. HARVEY: Q. Sure. Do you have a view
11:56:51 5 on whether -- all right. Let me back up a moment.

11:57:00 6 If you were trying to buy a product or
11:57:02 7 services, generally you want to pay less rather than
11:57:04 8 more for that product or service, correct?

11:57:06 9 MR. RUBIN: Objection. Form.

11:57:10 10 THE WITNESS: Generally in economics, cheaper
11:57:12 11 is preferred to more expensive, yes.

11:57:16 12 MR. HARVEY: Q. And in your role at
11:57:18 13 Google, you spent a lot of time thinking about --
11:57:20 14 it's not usually termed this way, but I think in
11:57:25 15 reality it's what it is -- purchasing labor by
11:57:30 16 hiring employees and then paying those employees to
11:57:32 17 do things for Google, correct?

11:57:34 18 A. I spent most of my time focused on hiring the
11:57:41 19 best talent possible and not thinking a great deal about
11:57:44 20 the state of the labor market or compensation practices.

11:57:50 21 Q. Yeah. And I'm glad you said that, because I'm
11:57:52 22 not asking about the wider labor market or anything.
11:57:55 23 I'm just asking about you and what you were doing at
11:57:58 24 Google.

11:58:02 25 Part of making sure that the best people in the

11:58:05 1 world would come to work for Google was negotiating what
11:58:08 2 their compensation would be when they -- when they
11:58:11 3 worked at Google, correct?

11:58:12 4 MR. RUBIN: Objection. Form.

11:58:20 5 THE WITNESS: Restate the question again.

11:58:23 6 MR. HARVEY: Q. When you recruited and
11:58:26 7 hired people to work for Google, their compensation
11:58:30 8 at Google was a topic that came up during those
11:58:33 9 conversations, correct?

11:58:34 10 A. Yes.

11:58:35 11 Q. And of course the employees who had come worked
11:58:39 12 for Google cared about what their compensation would be
11:58:41 13 generally, correct?

11:58:43 14 MR. RUBIN: Objection. Form.

11:58:44 15 THE WITNESS: I believe people care about
11:58:46 16 compensation.

11:58:48 17 MR. HARVEY: Q. Okay. And so have there
11:58:56 18 ever been examples that you know of where Google
11:59:01 19 tried to hire someone and Google found itself in a
11:59:04 20 bidding war for that person with another company?

11:59:10 21 A. Yes.

11:59:14 22 Q. You would have preferred that the other
11:59:16 23 company, in those examples, or in that example, had no
11:59:18 24 interest in the employee, correct?

11:59:20 25 MR. RUBIN: Objection. Form.

11:59:23 1 THE WITNESS: I would always prefer a path to
11:59:25 2 hiring an employee that had fewer obstacles to more.

12:00:02 3 MR. HARVEY: Q. If you could please look
12:00:04 4 at what's been previously marked as Exhibit 175.

12:00:53 5 A. Okay. I've read the document.

12:00:55 6 Q. And so this is a different string that starts
12:00:58 7 with the same email.

12:01:02 8 If you could look to the top of page 2, there,
12:01:05 9 it looks like Mr. Shader follows up on his email of
12:01:10 10 November 4th and responds to the group, adding a couple
12:01:16 11 others, on November 15th, 2003. Do you see that?

12:01:21 12 A. Yes.

12:01:26 13 Q. And then in Ms. Brown's response on the first
12:01:29 14 page she says (as read), "Sorry for the delay. I think
12:01:32 15 that the reality is employees of Google or Good need to
12:01:36 16 be regarded as free agents, so I'm not comfortable
12:01:41 17 prohibiting the recruitment of a Good employee to Google
12:01:44 18 (or vis versa). In addition, I'm not comfortable
12:01:51 19 betraying individual's privacy by revealing to Good when
12:01:53 20 we are in discussions with them (obviously if a
12:01:57 21 candidate does not ultimately get an offer, and yet it
12:02:00 22 is known they were shopping, the candidates will
12:02:03 23 perceive that negatively)."

12:02:05 24 Do you see that?

12:02:05 25 A. I do.

12:02:06 1 Q. Do you recall whether Google had an internal
12:02:12 2 conversation about this topic that led with the outcome
12:02:16 3 of Ms. Brown responding in this way?

12:02:22 4 A. I believe we did.

12:02:24 5 Q. And could you describe those conversations,
12:02:25 6 please.

12:02:27 7 A. Not with any greater accuracy than Shona is
12:02:31 8 codifying them in this email.

12:02:34 9 Q. So Shona's description is an accurate
12:02:37 10 representation of the internal decision Google made in
12:02:41 11 how to respond to Mr. Shader?

12:02:43 12 A. That, I don't know.

12:02:44 13 Q. Do you not know because you can't remember?

12:02:51 14 A. Yes.

12:03:06 15 MR. HARVEY: Okay. I'm done with that.

12:03:13 16 So this is something I forgot to mention to
12:03:14 17 you. This is a document that was introduced on Monday,
12:03:17 18 but we don't have the stamped copies yet, so I'm just
12:03:20 19 going to describe it. Do you want to mark it anyway?

12:03:36 20 (Discussion off the record.)

12:03:47 21 MR. HARVEY: Why don't we go off the record for
12:03:48 22 a moment.

12:03:49 23 THE VIDEOGRAPHER: We are now off the record at
12:03:51 24 12:03.

12:04:12 25 (Recess taken.)

12:04:26 1 THE VIDEOGRAPHER: We are now on the record at
12:04:28 2 12:04.

12:04:30 3 MR. HARVEY: Q. Mr. Rosenberg, if you
12:04:30 4 could please take a look at a document that has been
12:04:33 5 previously introduced as Exhibit 1738.

12:04:53 6 A. Okay.

12:04:56 7 Q. Here Mr. Shader responds to Ms. Brown's
12:04:58 8 rejection by e-mailing you and Mr. Kordestani
12:05:03 9 separately, correct?

12:05:04 10 A. Yes.

12:05:07 11 Q. And in it, Mr. Shader wrote, "Hey, guys, I
12:05:12 12 think this is a surprising response given the 'small
12:05:16 13 Valley' phenomenon."

12:05:18 14 Do you know what he's referring to here?

12:05:22 15 A. I do not know.

12:05:24 16 Q. Have you ever heard the term "small Valley
12:05:26 17 phenomenon" in the context of recruiting and hiring?

12:05:29 18 MR. RUBIN: Objection. Form.

12:05:31 19 THE WITNESS: I have not.

12:05:36 20 MR. HARVEY: Q. Okay. And the next
12:05:39 21 sentence is, "Omid's and my personal experiences at
12:05:45 22 Netscape would suggest that it's sometimes hard to
12:05:48 23 anticipate the long-term consequences of decisions
12:05:52 24 that are made when things are going well."

12:05:57 25 Do you see that?

12:05:58 1 A. I do.

12:05:59 2 Q. Do you have an understanding of what he was
12:06:01 3 saying here in terms of what the potential long-term
12:06:04 4 consequences would be?

12:06:07 5 A. I do think I understand what he's saying.

12:06:11 6 Q. And what's that?

12:06:12 7 A. I think he's saying that Google is doing very
12:06:15 8 well, and I'm a partner of yours, and you are choosing
12:06:18 9 not to be helpful to me in this situation. And when
12:06:23 10 things -- and it's a small world, and I don't appreciate
12:06:29 11 it.

12:06:31 12 Q. Sort of suggesting that if Google needs
12:06:35 13 something from Google in the future, Google may not get
12:06:38 14 the answer it wants?

12:06:42 15 MR. RUBIN: Objection. Form.

12:06:46 16 THE WITNESS: I don't know that that's what
12:06:47 17 he's saying, but he is clearly saying that -- he's
12:06:52 18 clearly indicating he's not happy with our choice --
12:06:56 19 with our decision.

12:06:59 20 MR. HARVEY: Q. Okay. If we could
12:07:12 21 fast-forward to the next year, 2004. This was a
12:07:18 22 time of, is it fair to say, explosive growth for
12:07:23 23 Google?

12:07:24 24 A. We were expanding rapidly.

12:07:26 25 Q. And that rapid expansion included hiring

12:07:28 1 rapidly, correct?

12:07:29 2 A. That is correct.

12:07:42 3 MR. HARVEY: This is a new exhibit. I believe
12:07:48 4 we're at 1753.

12:08:00 5 (Whereupon, Exhibit 1753 was marked for
12:08:00 6 identification.)

12:08:06 7 MR. HARVEY: Q. If you could please take a
12:08:08 8 look at the document and let me know when you are
12:08:09 9 ready.

12:08:52 10 A. Okay.

12:08:54 11 Q. Without going through a fairly lengthy email --
12:09:00 12 well, first let me say, this is an email that
12:09:03 13 Ms. Brown -- pardon me, Ms. Brown sent to you and others
12:09:07 14 at Google on June 7th, 2004, correct?

12:09:12 15 A. Correct.

12:09:14 16 Q. Is it fair to say that the topic of this
12:09:16 17 conversation is planning for this rapid growth you just
12:09:20 18 described?

12:09:22 19 MR. RUBIN: Objection. Form.

12:09:26 20 THE WITNESS: The topic of the email relates to
12:09:29 21 headcount planning and engineering hiring.

12:09:33 22 MR. HARVEY: Q. Okay. Is it fair to say
12:09:40 23 that at this time, June 7th, 2004, Google was
12:09:45 24 gearing up to dramatically increase the rate at
12:09:49 25 which it was hiring employees?

12:29:58 1 MR. RUBIN: Objection. Form.

12:30:08 2 THE WITNESS: I didn't -- I don't believe I
12:30:10 3 ever really fully understood it.

12:30:14 4 MR. HARVEY: Q. But did you understand
12:30:15 5 that it was for internal purposes only?

12:30:18 6 MR. RUBIN: Objection. Form.

12:30:24 7 THE WITNESS: I don't know whether it was or
12:30:25 8 wasn't an internal confidential list or not.

12:30:30 9 MR. HARVEY: Q. So you don't know, sitting
12:30:31 10 here today, whether it was shared with other
12:30:34 11 companies?

12:30:37 12 A. I don't.

12:30:39 13 Q. Do you know, sitting here today, whether a
12:30:42 14 company was put on or off the list pursuant to an
12:30:45 15 agreement with that company who made similar commitments
12:30:51 16 to Google?

12:30:51 17 A. I do not.

12:30:53 18 Q. You don't know one way or the other?

12:30:55 19 A. I don't.

12:30:59 20 Q. Do you recall discussing the do-not-call list
12:31:05 21 at meetings of the executive management group?

12:31:08 22 A. I vaguely recall discussions around recruiting
12:31:12 23 policies and procedures, companies and process --
12:31:18 24 internal processes related to those companies.

12:31:29 25 Q. And in those discussions, was Google's

12:31:33 1 do-not-call list part of those discussions?

12:31:45 2 A. I don't remember referring to the list as a
12:31:47 3 do-not-call list. I remember discussions around the
12:31:51 4 issue of proactively cold calling individuals at other
12:31:57 5 companies or not doing so.

12:32:00 6 Q. And you recall those discussions taking place
12:32:02 7 at meetings of the executive management group?

12:32:08 8 A. I don't recall whether or not they were the
12:32:10 9 official Monday executive management group meetings or
12:32:15 10 other meetings with similar sets of individuals present.

12:32:18 11 Q. Okay. Do you recall when those discussions
12:32:23 12 began, approximately?

12:32:29 13 A. Sometime after I started. So no, I don't
12:32:33 14 recall exactly when they began.

12:32:45 15 Q. Do you recall an event or communication that
12:32:51 16 prompted Google to discuss whether to create a
12:32:54 17 do-not-call list?

12:32:57 18 MR. RUBIN: Objection. Form.

12:33:01 19 THE WITNESS: I recall events from other
12:33:05 20 individuals that caused us to discuss the policy. I
12:33:11 21 don't know the direct -- I don't know the timing of the
12:33:14 22 do-not-call list, nor do I specifically recall the
12:33:17 23 do-not-call list. So I can't link the causality between
12:33:24 24 the two. But I do recall discussions based on
12:33:27 25 individuals voicing objections.

12:33:30 1 MR. HARVEY: Q. And these individuals were
12:33:31 2 typically the chief executives of other companies,
12:33:34 3 correct?

12:33:40 4 A. I think more often than not, the escalation
12:33:43 5 would come through a chief executive, yes.

12:33:46 6 Q. And those chief executives included Steve Jobs,
12:33:48 7 correct?

12:33:49 8 A. Definitely.

12:33:52 9 Q. And those chief executives included Paul
12:33:55 10 Otellini, correct?

12:33:58 11 A. I don't recall Paul specifically calling us,
12:34:02 12 but I do recall discussions involving Paul on these
12:34:09 13 issues. But I don't recall a particular discussion -- I
12:34:12 14 don't recall Paul initiating a discussion.

12:34:15 15 Q. Do you recall anyone else initiating a
12:34:16 16 discussion with Paul about these issues?

12:34:20 17 A. No. I believe I was involved in discussions
12:34:29 18 with Paul, but I don't remember whether I initiated
12:34:32 19 them.

12:34:33 20 Q. Okay. Was Mr. Campbell -- well, he wasn't a
12:34:45 21 chief executive at the time. I guess he was chairman of
12:34:48 22 the board of Intuit.

12:34:49 23 Was he one of those individuals who contacted
12:34:53 24 Google about concerns of Google's recruiting of
12:34:58 25 employees of his company?

12:35:00 1 MR. RUBIN: Objection. Form.

12:35:04 2 THE WITNESS: I believe Mr. Campbell was
12:35:07 3 present for some of these discussions. He was usually
12:35:09 4 present during the Monday after -- he was often present
12:35:11 5 during the Monday afternoon meetings.

12:35:22 6 MR. HARVEY: Q. Do you recall what the
12:35:23 7 basic terms of Google's do-not-call list were with
12:35:30 8 respect to the limitations it imposed on Google?

12:35:39 9 MR. RUBIN: Objection. Form.

12:35:39 10 THE WITNESS: Well, I don't exactly. I believe
12:35:41 11 it changed over the course of time, and I was generally
12:35:47 12 ambiguous as to what -- I generally felt the
12:35:53 13 implications of whatever was on the list was ambiguous.

12:35:59 14 MR. HARVEY: Q. You thought the list
12:36:03 15 imposed ambiguous restrictions on Google?

12:36:09 16 A. I never went through the details of what was on
12:36:11 17 the list, or paid super close attention to exactly how
12:36:15 18 the rules were articulated.

12:36:20 19 Q. Do you have any kind of general understanding
12:36:22 20 of the limitations that were embodied in the do-not-call
12:36:27 21 list?

12:36:27 22 MR. RUBIN: Objection. Form.

12:36:32 23 THE WITNESS: Again, since the -- since my
12:36:34 24 understanding of the policies evolved over time, I can't
12:36:44 25 tell you specifically what was embodied within those

12:36:47 1 policies at any given point in time.

12:36:49 2 MR. HARVEY: Q. But generally, if a
12:36:51 3 company was listed on the do-not-call list, then
12:36:56 4 Google could not cold call into that company,
12:36:59 5 correct?

12:37:01 6 MR. RUBIN: Objection. Form.

12:37:09 7 THE WITNESS: If recruiters cold called into a
12:37:11 8 company that was on the list, they could expect that the
12:37:14 9 other company would escalate and be upset about it.

12:37:18 10 MR. HARVEY: Q. And that initial act of
12:37:19 11 the recruiter, if it happened, would have been in
12:37:22 12 violation of the do-not-call list, correct?

12:37:26 13 A. I don't know.

12:37:35 14 Q. Are you aware of any other companies, aside
12:37:38 15 from Google, that had a similar do-not-call list?

12:37:45 16 A. No.

12:38:01 17 Q. In your experience with other companies, did
12:38:04 18 any of those companies have anything similar to the
12:38:09 19 do-not-call list that Google created?

12:38:11 20 MR. RUBIN: Objection. Form.

12:38:16 21 THE WITNESS: Again, I don't know the specifics
12:38:17 22 of what was on our list. I believe that -- I believe
12:38:24 23 that I have heard of other companies who, in practice,
12:38:26 24 chose or chose not to allow their recruiters to solicit
12:38:31 25 employees of firms that they engaged in business with,

12:38:35 1 and that that is a generally common practice. But not
12:38:41 2 familiar with the specifics of it.

12:38:50 3 MR. HARVEY: Q. What other companies do
12:38:51 4 you know of that had a list of companies that the
12:39:02 5 company could not cold call into?

12:39:15 6 A. Again, I don't know of such a literal list or
12:39:21 7 what might be on the list. I do remember when I was at
12:39:24 8 Dialog, which was a Knight Ridder subsidiary, that it
12:39:28 9 would not have been considered great form to
12:39:34 10 aggressively pursue the attorneys who were sent by a law
12:39:39 11 firm to help us with a particular project.

12:39:47 12 Q. Do you know whether Dialog maintained a list of
12:39:51 13 companies that Dialog could not cold call into?

12:39:55 14 A. No. But I distinctly remember a conversation
12:39:58 15 about recruiting an attorney that we worked with.

12:40:03 16 Q. When did that conversation occur, basically?

12:40:06 17 A. I don't know. Between 1990 and 1993.

12:40:18 18 Q. Okay. Aside from Dialog, are there any other
12:40:21 19 companies you know of that had a policy of not cold
12:40:28 20 calling into specific companies?

12:40:35 21 A. Not that I know of.

12:40:38 22 Q. Do you know whether Intel had such a policy?

12:40:40 23 MR. RUBIN: Objection. Form.

12:40:46 24 THE WITNESS: No, I don't.

12:40:51 25 MR. HARVEY: Q. Did you ever discuss

12:40:52 1 Intel's recruiting activities with anyone at Intel?

12:41:03 2 A. I believe I may have.

12:41:07 3 Q. And what conversations are you thinking of?

12:41:12 4 A. The only person at Intel who I had any regular
12:41:14 5 interaction with would have been Paul Otellini.

12:41:18 6 Q. Do you recall anything that Paul Otellini said
12:41:21 7 to you about Intel's recruiting?

12:41:23 8 A. No.

12:41:29 9 Q. Do you know whether Intuit had a list of
12:41:31 10 companies that Intuit could not cold call into?

12:41:36 11 A. I do not.

12:41:38 12 Q. Do you know whether Apple had a list of
12:41:40 13 companies that Apple could not cold call into?

12:41:44 14 A. I do not.

12:42:07 15 Q. Was Google's do-not-call list ever discussed at
12:42:11 16 a meeting of Google's board of directors?

12:42:15 17 A. It may have been.

12:42:16 18 Q. And what makes you think that it may have been?

12:42:26 19 A. Various parties who we've discussed here were
12:42:28 20 generally at those meetings. And our hiring and
12:42:38 21 recruiting practices were reported on in those meetings.

12:42:57 22 Q. And Mr. Campbell would often attend meetings of
12:43:02 23 Google's board of directors, correct?

12:43:03 24 A. Yes.

12:43:17 25 Q. Do you recall an irate call from Steve Jobs to

12:43:24 1 Sergey Brin in February 2005?

12:43:27 2 A. I recall the reporting of Steve being irate.

12:43:32 3 Q. And what do you recall about that?

12:43:44 4 A. That Steve was upset about -- I don't know
12:43:49 5 which particular conversation you are referring to. I
12:43:51 6 recall a number of instances in which it was reported
12:43:56 7 that Steve was irate. And I recall that the general
12:44:02 8 issues around which he was irate were the hiring of
12:44:09 9 Apple employees into Google.

12:44:15 10 Q. Do you know who at Google Steve called to
12:44:19 11 discuss -- to discuss that issue?

12:44:25 12 A. I believe at different times he called
12:44:27 13 different people. I'm pretty confident that he called
12:44:29 14 both Eric -- I believe I remember Eric saying he had
12:44:32 15 received calls, and I believe I remember Sergey saying
12:44:37 16 he received calls.

12:44:38 17 Q. Aside from Eric Schmidt, I take it, and Sergey
12:44:41 18 Brin, do you recall any other individuals at Google who
12:44:46 19 received these calls from Mr. Jobs?

12:44:50 20 A. The only thing I recall specifically is that
12:44:53 21 Alan Eustace also had a lot of direct discussions with
12:44:57 22 Steve, but those were the three primary people who Steve
12:45:00 23 spoke to over the years. I suppose in addition to
12:45:03 24 Larry. I don't recall a discussion with Larry on this
12:45:06 25 issue.

12:45:09 1 Q. Was it -- well, how common, if at all, was it
12:45:19 2 for Steve Jobs to call someone at Google in an irate
12:45:25 3 fashion?

12:45:27 4 MR. RUBIN: Objection. Form.

12:45:30 5 THE WITNESS: In my experience, our
12:45:32 6 interactions with Steve -- in our interactions with
12:45:37 7 Steve, he generally exhibited an irate, difficult,
12:45:43 8 ornery, and petulant behavior regarding his feelings
12:45:47 9 about our business dealings.

12:45:52 10 MR. HARVEY: Q. Did you have any -- that
12:45:54 11 will do.

12:45:55 12 Did you have any direct communications with
12:45:58 13 Steve Jobs?

12:46:01 14 A. No. Not beyond socially acknowledging his
12:46:08 15 existence in the context of events.

12:46:14 16 Q. Did you ever attend meetings or conference
12:46:17 17 calls where Mr. Jobs participated?

12:46:25 18 A. Not that I can recall.

12:46:40 19 Q. Do you recall whether Google first created its
12:46:48 20 do-not-call list in response to one of these irate calls
12:46:50 21 from Steve Jobs?

12:46:53 22 A. I recall substantive discussion in the time
12:46:57 23 frame -- occurring in the time frame of the call from
12:47:01 24 Steve. I don't know the exact time lines around such a
12:47:06 25 list or changes to such a list.

12:47:10 1 Q. Why don't we go through some documents --

12:47:12 2 A. Okay.

12:47:13 3 Q. -- that I think can help you.

12:47:16 4 This first one, I don't believe has been
12:47:19 5 introduced before.

12:47:28 6 (Whereupon, Exhibit 1754 was marked for
12:47:28 7 identification.)

12:47:41 8 MR. HARVEY: Q. Please let me know once
12:47:42 9 you've had a chance to examine the document.

12:48:27 10 A. Okay.

12:48:31 11 Q. You know, I should have mentioned this earlier,
12:48:33 12 but you were on the emg@google.com email list during
12:48:38 13 this time, correct?

12:48:40 14 A. Absolutely.

12:48:40 15 Q. And you were throughout the time that you were
12:48:44 16 a member of the EMG, correct?

12:48:47 17 A. Correct.

12:48:50 18 Q. Did you receive this email from Mr. Brin, looks
12:48:54 19 like on February 13th, 2005?

12:48:57 20 A. I'm sure I did.

12:48:57 21 Q. And this email describes one of the irate calls
12:49:00 22 we were just talking about, correct?

12:49:01 23 A. Yes, it does.

12:49:06 24 Q. At the bottom of that first paragraph, Mr. Brin
12:49:10 25 wrote, "He made various veiled threats too, though I am

12:49:15 1 not inclined to hold them against him too much, as he
12:49:19 2 seemed beside himself, (as Eric would say)."

12:49:25 3 Do you know what various veiled threats
12:49:31 4 Mr. Jobs made to Mr. Brin?

12:49:32 5 A. No, I don't.

12:49:33 6 Q. Did you ever discuss those veiled threats with
12:49:36 7 Mr. Brin?

12:49:36 8 MR. RUBIN: Objection. Form.

12:49:41 9 THE WITNESS: It's possible.

12:49:44 10 MR. HARVEY: Q. But you don't remember if
12:49:45 11 they happened, what the substance of those
12:49:48 12 conversations were?

12:49:50 13 A. I do not.

12:49:53 14 Q. And here, in what I just read, Mr. Brin says
12:49:57 15 that Mr. Jobs seemed beside himself, as Eric would say.

12:50:02 16 Do you know what he's talking about there in
12:50:03 17 terms of sounds like a phrase that Eric Schmidt used to
12:50:12 18 describe Mr. Jobs?

12:50:13 19 A. I think he's referring to the odd and
12:50:18 20 idiosyncratic manner of Steve's behavior when he engaged
12:50:24 21 with other companies and projected a great deal of anger
12:50:29 22 on an issue in a way that was unlike what many of us are
12:50:32 23 accustomed to with other executives.

12:50:54 24 Q. Okay. If you could look at Exhibit 561, which
12:50:57 25 appears to be written that Monday by Ms. Brown.

12:51:08 1 A. The following Monday.

12:51:12 2 Q. Yes. Thank you.

12:51:32 3 A. Okay.

12:51:34 4 Q. Do you recall the meeting of the EMG described
12:51:38 5 in this document that took place on February 14th, 2005?

12:51:45 6 A. I believe I was there, but I don't recall the
12:51:47 7 specifics of the meeting.

12:51:50 8 Q. Do you recall, generally, that the senior
12:51:53 9 executives of Google at that meeting discussed Steve
12:51:58 10 Jobs' call and what to do about it?

12:52:04 11 A. I don't recall the discussion occurred at that
12:52:07 12 management meeting, but it seems likely, given the dates
12:52:10 13 and times on these emails.

12:52:14 14 Q. And Ms. Brown wrote in this email, "We agreed
12:52:20 15 in EMG today that we would treat three companies in a
12:52:25 16 special way going forward, Genentech, Intel, and Apple."

12:52:31 17 Do you know why Genentech and Intel were
12:52:33 18 included with Apple here?

12:52:35 19 MR. RUBIN: Objection. Form.

12:52:36 20 THE WITNESS: I don't.

12:52:39 21 MR. HARVEY: Q. Do you know whether Paul
12:52:42 22 at Intel or Mr. Levinson at Genentech made similar
12:52:47 23 calls to Google at the time?

12:52:51 24 A. I do not.

12:52:57 25 Q. Do you recall anything about the discussion

12:52:59 1 that led to the decision to put these three companies on
12:53:05 2 a do-not-call list?

12:53:09 3 A. I do not.

12:53:22 4 MR. HARVEY: Okay. I believe this will be
12:53:39 5 Exhibit 1755.

12:53:53 6 (Whereupon, Exhibit 1755 was marked for
12:53:53 7 identification.)

12:53:58 8 MR. HARVEY: Q. If you could please let me
12:53:59 9 know once you've had a chance to examine the
12:54:02 10 document.

12:54:54 11 A. Okay.

12:54:56 12 Q. Is this another example of the irate calls that
12:55:00 13 we were talking about earlier?

12:55:01 14 A. Yes, it is.

12:55:04 15 Q. And Mr. Brown -- I'm sorry. Mr. Brin wrote
12:55:10 16 this to you and others on the following Thursday of that
12:55:16 17 week, February 17th, 2005; is that correct?

12:55:19 18 A. Yes, it is.

12:55:26 19 Q. And Mr. Brin wrote, in part, that Steve Jobs
12:55:28 20 said, "If you hire a single one of these people, that
12:55:32 21 means war."

12:55:36 22 Do you recall discussing this threat with
12:55:41 23 Mr. Brin or anyone else at Google?

12:55:43 24 MR. RUBIN: Objection. Form.

12:55:45 25 THE WITNESS: I do not.

12:55:54 1 MR. HARVEY: Q. Do you know whether
12:55:59 2 Mr. Campbell participated in the executive
12:56:01 3 management group meeting that occurred on Monday of
12:56:03 4 that week?

12:56:05 5 A. I do not.

12:56:06 6 Q. Do you have an understanding of why Mr. Brin
12:56:09 7 copied Mr. Campbell on this email?

12:56:15 8 MR. RUBIN: Objection. Form.

12:56:19 9 THE WITNESS: Mr. Campbell was often copied on
12:56:23 10 emails related to the EMG.

12:56:31 11 MR. HARVEY: Q. Do you have an
12:56:32 12 understanding that Mr. Campbell had a relationship
12:56:36 13 with Mr. Jobs at the time?

12:56:39 14 A. Yes, I do.

12:56:41 15 Q. And what was that relationship, to your
12:56:43 16 understanding?

12:56:46 17 A. They were business associates and friends.

12:56:57 18 Q. Did Google ever use Mr. Campbell as kind of a
12:57:06 19 back channel to Mr. Jobs?

12:57:12 20 MR. RUBIN: Objection. Form.

12:57:14 21 THE WITNESS: What's a back -- define back
12:57:16 22 channel.

12:57:18 23 MR. HARVEY: Q. As another means of
12:57:20 24 communication that is not a direct Google to Apple,
12:57:25 25 but where Mr. Campbell would talk to Mr. Jobs about

12:57:29 1 a topic and then report back to Google.

12:57:35 2 A. Mr. Campbell talked to the management team at
12:57:36 3 Google and Mr. Campbell talked to Mr. Jobs, and you'd
12:57:43 4 have to ask him specifically what he spoke about.

12:57:49 5 Q. When there was some tension between Google and
12:57:56 6 Mr. Jobs, did Mr. Campbell ever try to diffuse that
12:58:01 7 tension by talking to Mr. Jobs on his own and then
12:58:05 8 reporting back to Google?

12:58:07 9 MR. RUBIN: Objection. Form.

12:58:07 10 THE WITNESS: You would have to ask
12:58:09 11 Mr. Campbell.

12:58:09 12 MR. HARVEY: Q. Well, but you worked at
12:58:11 13 Google at the time, and you knew Mr. Campbell quite
12:58:13 14 well, so I'm asking you whether you're aware of that
12:58:18 15 ever occurring.

12:58:19 16 MR. RUBIN: Same objection.

12:58:21 17 THE WITNESS: It seems like the kind of thing
12:58:24 18 that -- it seems like the kind of thing that it's
12:58:28 19 reasonable to assume occurred. I can't give you a
12:58:31 20 specific instance of it occurring.

12:58:43 21 MR. RUBIN: How about one more document, Dean,
12:58:44 22 and then we'll break if that's okay. Or you want to
12:58:47 23 break now?

12:58:48 24 MR. HARVEY: Let me just see where I am. You
12:59:02 25 know, I'd like to push through a bit longer, unless you

12:59:05 1 want to take a break and I'll take a break. That's
12:59:07 2 fine.

12:59:07 3 MR. RUBIN: It's up to you. I was thinking
12:59:09 4 it's getting a little late -- I mean, we're moving to
12:59:12 5 1:00 o'clock for lunch, if you can go another -- what do
12:59:15 6 you think, another ten minutes?

12:59:17 7 MR. HARVEY: It depends. There is this kind of
12:59:20 8 topic -- I mean, it might be 20, 30 minutes.

12:59:23 9 MR. RUBIN: Let's go ahead and break now, then.

12:59:25 10 THE WITNESS: Okay. Let's break now.

12:59:26 11 THE VIDEOGRAPHER: Okay. We are now off the
12:59:27 12 record at 12:59.

01:22:55 13 (Recess taken.)

01:48:57 14 THE VIDEOGRAPHER: We are now on the record at
01:49:00 15 1:48.

01:49:02 16 MR. HARVEY: Q. I believe before the break
01:49:03 17 we were talking about Mr. Campbell vis-a-vis Google
01:49:07 18 and Apple, and a week in February 2005 when Apple
01:49:14 19 created its do-not-call list. Do you recall whether
01:49:20 20 that week, or thereabouts, Mr. Campbell reported the
01:49:26 21 fact that Apple -- or that Google would not recruit
01:49:31 22 from Apple any longer to Mr. Jobs?

01:49:35 23 A. I do not, nor am I aware of there being an
01:49:39 24 Apple do-not-call list. You said Apple created a
01:49:44 25 do-not-call list. I thought we were talking about the

01:49:46 1 Google do-not-call list.

01:49:48 2 Q. You're right, and that was my mistake. Thank
01:49:51 3 you for the correction. I was trying to refer to the
01:49:53 4 Google do-not-call list.

01:49:55 5 And I presume, then, that your answer wouldn't
01:49:58 6 change --

01:49:58 7 A. Correct.

01:49:59 8 Q. -- given that clarification.

01:50:05 9 If you could look at Exhibit 199.

01:50:13 10 Let me know when you are ready.

01:50:33 11 A. Okay.

01:50:36 12 Q. And I'll note I realize you are not on this
01:50:38 13 email. That the email labeled Exhibit 199 was sent from
01:50:46 14 Bill Campbell to Steve Jobs on Friday of that week,
01:50:49 15 February 18th, 2005.

01:50:53 16 Did you ever discuss with Mr. Campbell the fact
01:50:55 17 that he had made this communication with Mr. Jobs?

01:50:59 18 A. It's possible.

01:51:03 19 Q. Do you recall anything about that conversation,
01:51:09 20 if it happened?

01:51:10 21 A. No, I don't.

01:51:26 22 Q. Is this email consistent with what you
01:51:30 23 understood Bill Campbell -- Bill Campbell's practices
01:51:40 24 with respect to communicating back and forth between
01:51:44 25 Google and Apple?

01:51:46 1 A. It's clearly an example of Bill communicating
01:51:49 2 back and forth between us and Steve Jobs, yes.

01:51:56 3 Q. Do you know whether Mr. Campbell reported back
01:51:59 4 to Google that Steve Jobs had agreed that the
01:52:07 5 restriction would be mutual? That is, that Apple agreed
01:52:12 6 not to recruit out of Google?

01:52:15 7 MR. RUBIN: Objection. Form.

01:52:19 8 THE WITNESS: I don't know.

01:52:23 9 MR. HARVEY: Q. Do you recall any
01:52:24 10 conversation with Mr. Campbell or anyone else on the
01:52:27 11 topic of whether -- whether Apple reciprocated and
01:52:35 12 agreed not to recruit Google employees?

01:52:40 13 A. I recall that in the climate, that would seem
01:52:42 14 like an unlikely thing to be discussing because it --
01:52:46 15 the hiring dynamic was asymmetric. We were hiring
01:52:51 16 people from them, they weren't really hiring people from
01:52:54 17 us. We were about to go public or had recently gone
01:52:57 18 public. So Apple's hiring of Google employees simply
01:53:02 19 wasn't an issue.

01:53:15 20 Q. If you could please look at Exhibit 563.

01:53:28 21 A. Okay.

01:53:29 22 Q. And I'll note that this occurs in the same
01:53:32 23 month, shortly after the last email from Mr. Campbell to
01:53:36 24 Mr. Jobs.

01:53:41 25 Do you know who Danielle Lambert is?

01:53:43 1 A. No, I don't.

01:53:55 2 Q. Does this document refresh your recollection at
01:53:56 3 all about an agreement between Apple and Google not to
01:53:59 4 recruit from one another?

01:54:01 5 A. No.

01:54:16 6 Q. Do you know whether Mr. Jobs approached other
01:54:18 7 companies in a similar way for a similar purpose to get
01:54:23 8 other companies to agree not to recruit Apple employees?

01:54:26 9 MR. RUBIN: Objection. Form.

01:54:29 10 THE WITNESS: I do not.

01:54:33 11 MR. HARVEY: Q. Did you ever discuss that
01:54:33 12 possibility with anyone at Apple -- I'm sorry, with
01:54:36 13 anyone at Google?

01:54:40 14 MR. RUBIN: Objection. Form.

01:54:42 15 THE WITNESS: Not that I can recall.

01:54:54 16 MR. HARVEY: Q. If you can please take a
01:54:56 17 look at Exhibit 448. And I'll represent to you that
01:55:13 18 this document is a little different than the other
01:55:15 19 documents I'll show you in that the first part of
01:55:17 20 the document was written for this case, and it's a
01:55:20 21 declaration of Mr. Colligan who was CEO of Palm at
01:55:25 22 the time of the events described. And then there
01:55:27 23 are two emails attached to his declaration that are
01:55:32 24 communications between him and Mr. Jobs.

01:55:34 25 A. Okay. Well, I haven't read it all, but....

02:15:42 1 Okay.

02:15:45 2 Q. You are not on this communication, but it
02:15:47 3 appears to be one in which Ms. Brown is asking for the
02:15:55 4 current version of the do-not-call list for a discussion
02:15:58 5 of -- at the executive management group that occurred on
02:16:07 6 the 23rd of April, 2007.

02:16:09 7 If you could turn to the attachment on the
02:16:11 8 first page, the heading states, "Protocol for 'Do Not
02:16:20 9 Cold Call' and 'Sensitive' Companies." And then it
02:16:24 10 states, "The following companies (and by association,
02:16:27 11 their subsidiaries) have special agreements with Google
02:16:32 12 and are part of the 'Do Not Cold Call' list." And then
02:16:37 13 several companies are listed. Do you see that?

02:16:41 14 A. Uh-huh. Yes.

02:16:44 15 Q. Is this, what I've read so far through the list
02:16:47 16 of parent companies, is that, to your knowledge, an
02:16:50 17 accurate description of Google's do-not-cold-call list
02:16:55 18 at the time?

02:16:56 19 MR. RUBIN: Objection. Form.

02:17:03 20 THE WITNESS: I don't know.

02:17:04 21 MR. HARVEY: Q. You don't have an opinion
02:17:06 22 one way or the other?

02:17:10 23 A. I do not.

02:17:15 24 Q. Do you recall discussing -- or do you recall
02:17:19 25 this particular version of the do-not-call list being

02:17:23 1 passed out and discussed at the meeting of the EMG on
02:17:27 2 the 23rd of April, 2007?

02:17:30 3 A. I do not.

02:17:32 4 Q. Okay. I believe you testified earlier that
02:18:24 5 Bill Campbell regularly attended meetings of the
02:18:28 6 executive management group?

02:18:30 7 A. Correct.

02:18:31 8 Q. So it's fair to say that he participated in
02:18:35 9 discussions concerning the do-not-call list, correct?

02:18:39 10 MR. RUBIN: Objection. Form.

02:18:46 11 THE WITNESS: Bill often did not participate in
02:18:47 12 discussions but listened. So I'm not sure that I can
02:18:49 13 say that he participated in discussions of the
02:18:52 14 do-not-call list.

02:18:53 15 MR. HARVEY: Q. Sure. Why don't I clarify
02:18:55 16 the word participate. Well, why don't I modify it.

02:19:00 17 Did Bill Campbell -- well, scratch that.

02:19:04 18 Is it fair to say that Bill Campbell attended
02:19:07 19 meetings at Google in which Google's do-not-call list
02:19:10 20 was discussed?

02:19:16 21 MR. RUBIN: Objection. Form.

02:19:19 22 THE WITNESS: Bill was at the vast majority of
02:19:20 23 the management meetings, not as many of those as I was,
02:19:23 24 so I cannot separate out in my head which meetings he
02:19:26 25 was at and which meetings he wasn't. But generally it

02:19:30 1 does seem probable that over the course of time, he was
02:19:33 2 present when some of these issues were discussed.

02:19:41 3 MR. HARVEY: Q. Do you recall, in 2005,
02:19:42 4 Mr. Campbell contacting you to complain about
02:19:51 5 Google's recruiting of Intuit people?

02:19:53 6 A. No, I do not.

02:20:04 7 Q. If you could please take a look at Exhibit 193.

02:20:50 8 A. Okay.

02:20:52 9 Q. If you could focus on Bill Campbell, it looks
02:20:56 10 like an email to you, which is the second one up from
02:21:00 11 the bottom on the first page.

02:21:01 12 A. Yes.

02:21:02 13 Q. Did Bill Campbell write you this email on
02:21:04 14 November 18th, 2005?

02:21:06 15 A. Yes.

02:21:08 16 Q. And he says, "Jonathan, are you guys nuts."

02:21:11 17 A. Yes.

02:21:15 18 Q. What did you understand Mr. Campbell to be
02:21:17 19 doing here?

02:21:18 20 A. I don't recall. But from the context of the
02:21:20 21 thread, he's clearly referring to our recruiting a CMO
02:21:26 22 from Intuit.

02:21:31 23 Q. In response to this, did you have any
02:21:35 24 communications with Mr. Campbell about Google's
02:21:39 25 recruiting of Intuit people?

02:21:43 1 A. I don't recall.

02:21:47 2 Q. Do you recall making any assurances to him that
02:21:50 3 Google would stop recruiting Intuit people?

02:21:53 4 MR. RUBIN: Objection. Form.

02:22:02 5 THE WITNESS: I don't recall anything other
02:22:03 6 than escalating this to Shona and Martha, who evidently
02:22:10 7 said they would take care of it.

02:22:13 8 MR. HARVEY: Q. And the matter was taken
02:22:14 9 care of as far as you were concerned?

02:22:16 10 MR. RUBIN: Objection. Form.

02:22:19 11 THE WITNESS: Well, the issue of -- I believe
02:22:24 12 recruiting for this particular individual -- well, I
02:22:27 13 guess I don't know. Martha says, we can't call the CMO
02:22:44 14 after the first discussion, so I assume that was the end
02:22:47 15 of it.

02:22:59 16 MR. HARVEY: Q. Do you recall, subsequent
02:23:01 17 to that, Bill Campbell asking Shona Brown to put
02:23:09 18 Intuit on the do-not-call list?

02:23:12 19 A. I don't.

02:23:14 20 Q. Okay. Do you recall having any discussions
02:23:36 21 with anyone at Google about putting Intuit fully on the
02:23:41 22 do-not-call list?

02:23:43 23 MR. RUBIN: Objection. Form.

02:23:46 24 THE WITNESS: I don't.

02:24:15 25 MR. HARVEY: Q. Switching gears a bit to

02:31:33 1 THE WITNESS: Unusual to -- say that again? It
02:31:35 2 would be unusual?

02:31:36 3 MR. HARVEY: Q. This gets back to
02:31:37 4 something we discussed at the beginning, in that
02:31:40 5 here you appear to be saying that you're going to
02:31:47 6 notify █████'s management at Intel before actually
02:31:52 7 finalizing an agreement with █████ to come work for
02:31:55 8 Google --

02:31:57 9 MR. RUBIN: Objection. Form.

02:31:57 10 MR. HARVEY: Q. -- and so --

02:31:59 11 MR. RUBIN: Sorry. I thought you were done.

02:32:00 12 MR. HARVEY: I'm trying to clarify the
02:32:01 13 question.

02:32:04 14 Q. And so my question is, given our prior
02:32:11 15 conversation, would you agree that that's an unusual
02:32:14 16 thing for Google to do, given that you were putting █████
02:32:19 17 into an awkward spot?

02:32:21 18 MR. RUBIN: Objection. Form.

02:32:23 19 THE WITNESS: I guess I just don't understand
02:32:24 20 what I'm being asked.

02:32:26 21 MR. HARVEY: Q. Here in this email you are
02:32:36 22 talking about notifying █████'s management before
02:32:38 23 even getting to the stage of specifically discussing
02:32:41 24 an offer with █████, correct?

02:32:47 25 A. All I'm saying is that I had a discussion with

02:32:52 1 Bill and felt that a scenario could evolve in which I
02:32:57 2 want to give a courtesy call to Paul Otellini. But [REDACTED]
02:33:00 3 was coming tomorrow, and I'll find out how [REDACTED] wants to
02:33:05 4 handle the communication with his own management. And
02:33:08 5 we haven't even gotten to the stage of specifically
02:33:10 6 discussing an offer yet. So my next step is to speak to
02:33:14 7 [REDACTED] and then determine what I need to do next.

02:33:28 8 Q. Do you recall what [REDACTED]'s -- well, sorry. Did
02:33:33 9 you, in fact, meet with [REDACTED] the next day?

02:33:35 10 A. I don't remember.

02:33:39 11 Q. Do you recall speaking with [REDACTED] about this
02:33:43 12 issue?

02:33:44 13 A. I do not.

02:33:47 14 Q. Did [REDACTED] come to work for Google?

02:33:49 15 A. I don't know.

02:33:51 16 Q. Okay. That's something presumably we can
02:33:56 17 check.

02:34:11 18 Actually, this is the end of a segment. Why
02:34:14 19 don't we take a break.

02:34:16 20 THE VIDEOGRAPHER: We are now off the record at
02:34:17 21 2:34.

02:34:22 22 (Recess taken.)

02:48:36 23 THE VIDEOGRAPHER: We are now on the record at
02:48:37 24 2:48.

02:48:38 25 MR. HARVEY: Q. I'm going to change topics

02:48:42 1 and go forward in time a bit --

02:48:45 2 A. Okay.

02:48:45 3 Q. -- to about 2007.

02:48:49 4 A. Okay.

02:48:51 5 Q. Do you recall that at about that time and in
02:48:53 6 that year, Google began to get particularly concerned
02:48:58 7 with Facebook's recruiting of Google employees?

02:49:03 8 A. I don't recall that it was that time or year,
02:49:05 9 but it sounds roughly correct, and I do recall Google
02:49:09 10 being concerned about Facebook's recruiting.

02:49:14 11 Q. And why did Facebook present a concern for
02:49:19 12 Google in that regard?

02:49:25 13 A. Because they were the next hot, young, pre-IPO
02:49:30 14 startup company.

02:49:32 15 Q. They were sort of like where Google was several
02:49:34 16 years prior?

02:49:35 17 A. Relative to large, established companies in the
02:49:38 18 Valley, yes, in many ways, that analogy is correct.

02:49:44 19 Q. And here, the roles were switched a bit where
02:49:48 20 Google had become something of an established company
02:49:51 21 trying to fend off the young upstart; is that fair?

02:50:06 22 MR. RUBIN: Objection. Form.

02:50:06 23 THE WITNESS: I think as I said before, Google
02:50:08 24 was the -- at this stage, Facebook was the young, hot,
02:50:12 25 pre-IPO startup and Google was a larger, more

02:50:15 1 established firm.

02:50:17 2 MR. HARVEY: Q. Okay. If you could please
02:50:34 3 take a look at Exhibit 660.

02:51:16 4 A. Okay.

02:51:17 5 Q. Okay. Did you receive Mr. Brin's email here on
02:51:22 6 the 13th of October, 2007?

02:51:24 7 A. Yes.

02:51:26 8 Q. Okay. And this is an example of the kinds of
02:51:28 9 discussions that Google was having about the retention
02:51:36 10 risk for Google employees presented by Facebook; is that
02:51:40 11 correct?

02:51:45 12 A. That is -- the subject of discussion does
02:51:48 13 relate to Facebook and retention of Google employees.

02:51:54 14 Q. And then you forwarded that email to Bill
02:51:56 15 Campbell the same day, correct?

02:51:58 16 A. Yes.

02:52:02 17 Q. Is there a reason why you would forward an
02:52:03 18 email like this to Mr. Campbell?

02:52:07 19 A. Again, as my closest management advisor, with
02:52:11 20 whom I discussed many of the important issues on Eric's
02:52:17 21 staff, it was customary from time to time for me to send
02:52:22 22 messages to Eric's staff that he might not have received
02:52:26 23 to him.

02:52:30 24 Q. And this threat that Facebook posed, this was
02:52:32 25 one of the topics you discussed with Mr. Campbell?

02:52:36 1 MR. RUBIN: Objection. Form.

02:52:41 2 THE WITNESS: I did discuss the threat from
02:52:43 3 Facebook from time to time with Mr. Campbell.

02:52:52 4 MR. HARVEY: Q. What, to your knowledge,
02:52:54 5 was Mr. Campbell's view of how Google should respond
02:52:58 6 to the threat from Facebook?

02:53:03 7 A. I don't remember his specific broad view, or
02:53:11 8 how it changed over time.

02:53:15 9 Q. Do you recall discussing with him alternative
02:53:21 10 strategies in terms of how to retain Google employees in
02:53:29 11 light of the Facebook threat?

02:53:35 12 A. I recall him being helpful as we attempted to
02:53:39 13 implement policies that would allow us to respond
02:53:45 14 expeditiously to Facebook's threats.

02:53:51 15 Q. And what type of expeditious responses are you
02:54:01 16 referring to?

02:54:02 17 A. [REDACTED]
[REDACTED], counteroffers, speaking to
02:54:15 19 employees himself, if he could -- because he was a
02:54:18 20 management coach and mentor for them. Any number of
02:54:22 21 measures.

02:54:26 22 Q. Was Mr. Campbell helpful in getting the
02:54:30 23 relevant players at Google to agree that Google should

02:54:35 24 [REDACTED]
[REDACTED]

02:54:49 1

A. [REDACTED]

[REDACTED] 2

[REDACTED], and I recall often leaning

02:54:56 3

on Bill to get his assistance to help the management

02:54:58 4

team reach closure on important decisions. I don't

02:55:02 5

specifically recall him assisting in that particular

02:55:08 6

way.

02:55:14 7

Q. And would Bill's assistance include convincing

02:55:18 8

other senior members of Google's executive team, such as

02:55:22 9

Eric Schmidt?

02:55:24 10

MR. RUBIN: Objection. Form.

02:55:29 11

THE WITNESS: Bill operated across the entire

02:55:30 12

management team, and he and I often discussed goals that

02:55:34 13

we collectively had and how to get to a decision or

02:55:41 14

action as quickly as possible.

02:56:01 15

MR. HARVEY: Q. If you could please take a

02:56:02 16

look at Exhibit 608.

02:56:39 17

A. Okay.

02:56:48 18

Q. Is this an example of the expeditious response

02:56:52 19

you were just describing?

02:56:53 20

A. Yes, it appears to be.

02:56:56 21

Q. And this is describing a policy Google had at

02:56:59 22

the point in time of [REDACTED]

[REDACTED]

[REDACTED]

02:57:08 25

A. Yes.

02:57:18 1 Q. And did you receive this top email from

02:57:20 2 Mr. Schmidt on the 14th of November, 2007?

02:57:22 3 A. I'm sure I did.

02:57:23 4 Q. Okay. Do you have an understanding of why
02:57:28 5 Mr. Schmidt was concerned that this policy was leaked to
02:57:33 6 other employees of Google?

02:57:38 7 A. As a general rule, it was understood that
02:57:43 8 discussions that occurred at the senior management team
02:57:48 9 were not to be shared widely with employees unless it
02:57:54 10 was agreed that the information would be shared with
02:57:56 11 employees.

02:58:16 12 Q. Did Google monitor how effective these
02:58:18 13 strategies were at retaining Google employees?

02:58:22 14 A. Yes.

02:58:24 15 Q. Do you recall what the view was about whether
02:58:30 16 efforts [REDACTED] was effective
02:58:33 17 in retaining people?

02:58:36 18 A. I believe we thought it was effective. I don't
02:58:38 19 recall what the data showed, but I certainly believe
02:58:42 20 that the management team thought it was important and
02:58:44 21 strongly encouraged each other to do it.

02:59:00 22 Q. Do you recall whether any members of the senior
02:59:07 23 executive team were concerned that [REDACTED]

[REDACTED], that
02:59:15 25 it would encourage people to go and shop for an offer

02:59:17 1 from Facebook?

02:59:19 2 A. Yeah.

02:59:26 3 Q. And Sergey Brin held that opinion; is that
02:59:30 4 correct?

02:59:32 5 A. I'm confident he articulated that opinion at
02:59:34 6 some points in time. I don't know that he always held
02:59:37 7 that opinion, but I do recall hearing him say that.

02:59:58 8 Q. If you would please look at Exhibit 613.

03:00:25 9 A. Okay.

03:00:28 10 Q. Did you receive this email from Ms. Mayer on
03:00:33 11 March 14th, 2008?

03:00:35 12 A. Yes.

03:00:36 13 Q. And this describes the concern we were just
03:00:40 14 talking about in terms of worrying that word would get
03:00:43 15 out to other Google employees that [REDACTED]

[REDACTED]; is that right?

03:00:57 17 A. Yes. It says that rumors and reports, that if
03:01:01 18 you want something, you should go out and get a
03:01:05 19 competitive offer.

03:01:19 20 Q. Do you recall -- see, I guess summer of 2008 or
03:01:29 21 so, whether there was a discussion at Google to try an
03:01:35 22 alternative strategy, that is, to contact Facebook
03:01:41 23 directly and try to discourage Facebook from recruiting
03:01:45 24 Google people?

03:01:48 25 MR. RUBIN: Objection. Form.

03:01:49 1 THE WITNESS: I don't recall the specific time,
03:01:51 2 but I do recall talking to Sheryl at Facebook about
03:01:57 3 minimizing the degree to which they recruited Google
03:02:00 4 employees.

03:02:02 5 MR. HARVEY: Q. And you know what, we'll
03:02:08 6 get to that in just a minute. Before we -- I'll
03:02:11 7 show you those emails, we'll talk about it.

03:02:15 8 But for now, before you actually contacted
03:02:19 9 Sheryl Sandberg, do you recall discussions at Google
03:02:24 10 about trying to convince Facebook to enter into a truce
03:02:29 11 with Google with respect to recruiting?

03:02:32 12 MR. RUBIN: Objection. Form.

03:02:35 13 THE WITNESS: I certainly don't recall the
03:02:37 14 timing of these things. I recall many -- I'm aware of
03:02:43 15 the fact that there were many discussions regarding what
03:02:46 16 to do about the problem of Facebook recruiting Google
03:02:50 17 employees.

03:02:51 18 MR. HARVEY: Q. And was one potential
03:02:52 19 response seeking a truce with Facebook.

03:02:55 20 MR. RUBIN: Objection. Form.

03:02:58 21 THE WITNESS: Well, as we talked about before
03:03:00 22 when we were talking about Apple, we weren't doing any
03:03:04 23 recruiting from them at the time.

03:03:08 24 MR. HARVEY: Q. Uh-huh.

03:03:09 25 A. So the only thing I remember is trying to

03:03:11 1 minimize the degree to which they were recruiting from
03:03:14 2 us.

03:03:22 3 Q. Google didn't try to recruit back employees
03:03:24 4 that it lost to Facebook?

03:03:27 5 A. We did. And, in fact, we recruited -- there is
03:03:31 6 an employee that we recruited back from Facebook, but it
03:03:34 7 had not -- the scope of our recruiting from Facebook had
03:03:37 8 not risen to a level that they seemed concerned about
03:03:40 9 it. So I don't ever recall them bringing it up with us.

03:03:58 10 Q. If you could please look at Exhibit 616.

03:04:33 11 I'm going to start by asking you about the last
03:04:36 12 email on the back.

03:04:37 13 A. All right.

03:05:04 14 Okay.

03:05:06 15 Q. Did you receive this email from Ms. Brown on
03:05:09 16 June 23rd, 2008?

03:05:11 17 A. Yes.

03:05:12 18 Q. Okay. And in it she says that Bill Campbell,
03:05:16 19 you, and her spoke on that day about, "really doubling
03:05:22 20 down on our efforts to recruit back a couple of people,
03:05:25 21 I'd assume at a high cost, just to stem the tide and
03:05:30 22 give us a better negotiating position on a recruiting
03:05:34 23 'truce'." Do you see that?

03:05:38 24 A. I do.

03:05:39 25 Q. Do you recall the conversation she's

03:05:41 1 describing?

03:05:42 2 A. I don't.

03:05:44 3 Q. Okay. And then she continues, "Our intent
03:05:49 4 would be to only do this for 2 or 3 people (and then
03:05:53 5 stop, so we don't send a message that we will pay that
03:05:56 6 sort of price across the board) just enough to get a
03:06:00 7 truce."

03:06:03 8 Do you understand that that was a strategy that
03:06:11 9 Google attempted?

03:06:12 10 MR. RUBIN: Objection. Form.

03:06:14 11 THE WITNESS: I understand that it's a sentence
03:06:16 12 that she wrote in this email. I don't know that it was
03:06:21 13 a strategy that we attempted. I know of an individual
03:06:25 14 we attempted to hire back. But with respect to whether
03:06:31 15 or not that was an agreed-to company strategy, I don't
03:06:34 16 know.

03:06:48 17 MR. HARVEY: Q. And here's Exhibit 666,
03:06:51 18 which I believe is one of the emails you are
03:06:53 19 referring to between you and Sheryl Sandberg.

03:07:09 20 A. Okay. What portion do you want to talk about?

03:07:11 21 Q. Sure. I'm going to start by talking about, it
03:07:16 22 looks like, the beginning of your first email to her on
03:07:21 23 August 9th, 2008 that begins on page 3.

03:07:26 24 A. Okay.

03:07:30 25 Q. In the second paragraph you -- well first, let

03:07:34 1 me ask, did you send this email to Ms. Sandberg on
03:07:39 2 August 9th, 2008?

03:07:45 3 A. Yes.

03:07:46 4 Q. In the second paragraph you wrote, "I am sorry
03:07:48 5 that broader relations seem to be at Defcon 2 at the
03:07:53 6 corporate level with us right now. Maybe there is a
03:07:55 7 path to navigate where we agree to stay out of each
03:07:58 8 other's way and do no harm." Do you see that?

03:08:02 9 A. Yes.

03:08:02 10 Q. What were you referring to by Defcon 2?

03:08:10 11 A. I assume it's an allusion to the Department of
03:08:14 12 Defense nuclear status levels, and I'm simply pointing
03:08:20 13 out in a colorful way that the companies are not happy
03:08:24 14 with each other at the moment.

03:08:26 15 Q. And why weren't the companies happy with each
03:08:29 16 other?

03:08:30 17 A. Primarily because of the number of people that
03:08:32 18 she was recruiting from Google, I believe.

03:08:35 19 Q. Okay. And then next sentence in that
03:08:42 20 paragraph is, "Maybe there is a path to navigate where
03:08:47 21 we agree to stay out of each other's way and do no
03:08:50 22 harm." Do you see that?

03:08:51 23 A. Uh-huh.

03:08:52 24 Q. What path were you referring to here?

03:08:55 25 A. Doesn't say.

03:08:55 1 Q. Well, but I have the fortune of having you in
03:08:59 2 front of me so I can ask you.

03:09:01 3 What did you mean by saying there is a path to
03:09:03 4 navigate where -- where the two of you would agree to
03:09:08 5 stay out of each other's way?

03:09:14 6 A. Presumably that I could find out what we at
03:09:19 7 Google were upset about and try to convince her to stop.

03:09:23 8 Q. To stop hiring Google people, correct?

03:09:27 9 A. Or reduce it.

03:09:31 10 Q. And then if you go up to Sandberg's response to
03:09:35 11 that, she asked the same question I asked about
03:09:38 12 Defcon 2. And she says, you know, essentially that she
03:09:43 13 doesn't know what you are talking about.

03:09:45 14 And then in your response to her you wrote, "I
03:09:50 15 was referring to the broad relations between us,
03:09:54 16 primarily related to employees leaving from one company
03:09:56 17 and going to the other which have severely strained
03:09:59 18 relations." Is that correct?

03:10:00 19 A. Yeah.

03:10:02 20 MR. RUBIN: Objection. Form.

03:10:02 21 MR. HARVEY: Q. And that's essentially
03:10:04 22 what you were just talking about, correct?

03:10:06 23 A. It's referring to the fact that she's hiring
03:10:08 24 Google employees at an inordinately fast rate.

03:10:15 25 Q. And then in her reply to that she says, "On

03:10:23 1 that, I will say the same thing I keep saying. We have
03:10:26 2 many applicants from all over -- including Google. I
03:10:29 3 would say that our applicant pool is fairly broad and
03:10:33 4 Google does not represent an inordinate amount, but
03:10:36 5 there are a steady stream of people applying." And then
03:10:40 6 she says, "We are being very strict on the Google
03:10:43 7 non-solicit."

03:10:44 8 Do you have an understanding what she means by
03:10:45 9 the "Google non-solicit"?

03:10:47 10 A. I believe she's talking about the
03:10:49 11 nonsolicitation in a standard Google hiring agreement.

03:10:53 12 Q. And that is that Google employees agreed in
03:11:02 13 some respect that if they left Google, they wouldn't try
03:11:05 14 to recruit their former coworkers or something to that
03:11:06 15 effect; is that what you mean?

03:11:08 16 A. I believe it says they wouldn't solicit their
03:11:11 17 coworkers for a period of 12 months.

03:11:14 18 Q. And then you responded to her in part by
03:11:29 19 saying, "My personal opinion is that I think you are
03:11:33 20 putting too much weight in your view of the notion of
03:11:35 21 'not soliciting' as though soliciting in itself is the
03:11:39 22 only thing that upsets people. Rather, it is the
03:11:42 23 outcome of people going from one company to the other
03:11:44 24 which is problematic."

03:11:46 25 Do you see that?

03:11:47 1 A. I do.

03:11:47 2 Q. Okay. I'll try to short-circuit some of this
03:11:55 3 so we can save some time. She asks you of your view of
03:11:58 4 Google's hiring. And then you responded to her, "My
03:12:01 5 view is we would be better off if neither of us did it.
03:12:04 6 If you all are, I sure as hell will try likewise."

03:12:08 7 Do you see that?

03:12:09 8 A. Uh-huh.

03:12:11 9 Q. Here you're offering to her a mutual commitment
03:12:15 10 that both companies would try to reduce the hiring from
03:12:17 11 the other; is that right?

03:12:22 12 A. I'm not offer -- I don't see that I'm offering
03:12:24 13 any mutual commitment or establishing any agreement, I'm
03:12:28 14 just trying to get a dialogue moving in a direction
03:12:32 15 where she will reduce the scope of her hiring at Google.

03:12:41 16 Q. But you are offering -- and I understand that
03:12:43 17 you are not entering into an agreement with this email.
03:12:46 18 But it seems to me that you're outlining the terms of a
03:12:51 19 truce with Facebook. Is that a fair assessment?

03:12:58 20 MR. RUBIN: Objection. Form.

03:13:03 21 THE WITNESS: I think I'm saying that I -- my
03:13:06 22 view is that it would be better off if neither of us did
03:13:11 23 it.

03:13:12 24 MR. HARVEY: Q. And by "it," you mean
03:13:15 25 hiring?

03:13:16 1 MR. RUBIN: Objection. Form.

03:13:22 2 THE WITNESS: It would seem to me that hiring
03:13:24 3 in large -- hiring large numbers of employees from each
03:13:26 4 other, which seems to be the thing that I objected to at
03:13:30 5 the outset.

03:13:35 6 MR. HARVEY: Q. Okay. If you could go to
03:14:01 7 the bottom of page 1 to Ms. Sandberg's response she
03:14:07 8 says, "That is not what I meant at all. What I
03:14:10 9 meant is that Google grew by hiring from other firms
03:14:13 10 in our industry even when they minded and people
03:14:16 11 like Meg called Eric as we believed in a free labor
03:14:20 12 market."

03:14:23 13 Is it correct that Google grew by hiring from
03:14:25 14 other firms in the industry?

03:14:31 15 A. In addition to hiring people straight out of
03:14:34 16 school, yes.

03:14:39 17 Q. And then I'm just going to jump up to her email
03:14:43 18 to you on August 10th, 2008 at the very top where she
03:14:50 19 says, "I think what really happens is that companies who
03:14:53 20 have relationships agree in limited ways not solicit
03:14:57 21 from each other. To my knowledge, Google has never
03:15:01 22 agreed not to hire from any company."

03:15:02 23 And then she says, "Google did agree not to
03:15:05 24 solicit from Intel, Apple, and maybe a few others due to
03:15:09 25 board relationships, but never not to hire."

03:15:15 1 Is this a true statement of fact, as far as you
03:15:18 2 know, that Google agreed with Intel, Apple, and maybe a
03:15:23 3 few others not to solicit due to board relationships?

03:15:27 4 MR. RUBIN: Objection. Form.

03:15:27 5 THE WITNESS: I don't know the causality of
03:15:30 6 agreements.

03:15:36 7 MR. HARVEY: Q. Okay. Putting causality
03:15:38 8 aside, do you agree that Google, in fact, made these
03:15:42 9 agreements not to solicit with Intel, Apple and
03:15:43 10 maybe a few others.

03:15:45 11 MR. RUBIN: Objection. Form.

03:15:47 12 THE WITNESS: I believe we had a do-not-call
03:15:49 13 list and a policy as articulated by Mr. Geshuri in the
03:15:54 14 note that we looked at earlier.

03:15:57 15 MR. HARVEY: Q. As far as you know, those
03:15:59 16 weren't pursuant to agreements?

03:16:01 17 MR. RUBIN: Objection. Form.

03:16:02 18 THE WITNESS: I'm not aware of any agreements.

03:16:05 19 MR. HARVEY: Q. So you don't know one way
03:16:06 20 or the other?

03:16:09 21 MR. RUBIN: Objection. Form.

03:16:09 22 THE WITNESS: I'm not aware of any agreements.

03:16:12 23 MR. HARVEY: Q. Okay. Would you say that
03:16:29 24 your attempt to negotiate with Sheryl Sandberg was
03:16:34 25 unsuccessful?

03:16:43 1 MR. RUBIN: Objection. Form.

03:16:48 2 THE WITNESS: I didn't get -- I don't feel that
03:16:49 3 I had a satisfactory response from Sheryl in achieving
03:16:55 4 my objective.

03:16:57 5 MR. HARVEY: Q. And your objective was to
03:16:59 6 try to convince her to substantially decrease the
03:17:04 7 hiring Facebook was doing at Google, correct?

03:17:07 8 A. My objective was to reduce the overall number
03:17:10 9 of employees that she was hiring from Google.

03:17:17 10 Q. And then shortly following your attempt, which
03:17:19 11 I believe -- let me just look back at it -- was August
03:17:30 12 9th, a few days later, Omid Kordestani gave it a shot;
03:17:34 13 is that correct?

03:17:36 14 MR. RUBIN: Objection. Form.

03:17:38 15 THE WITNESS: I don't know what "gave it a
03:17:40 16 shot" means, or when Omid spoke to Sheryl, but I'm sure
03:17:46 17 that from time to time Omid had calls with her as well.

03:17:53 18 MR. HARVEY: Q. Why don't we make it a bit
03:17:55 19 more concrete. If you could please look at
03:17:57 20 Exhibit 619.

03:19:10 21 A. Okay.

03:19:14 22 Q. If you go to the last email Mr. Kordestani
03:19:18 23 wrote, did you receive this on August 13th, 2008?

03:19:24 24 A. Yes.

03:19:24 25 Q. And among other things, Mr. Kordestani

03:19:26 1 describes a meeting with Sheryl Sandberg in which he
03:19:32 2 complained about Facebook's rate of recruiting. Do you
03:19:35 3 see that?

03:19:35 4 A. Yeah. It may have been a phone conversation.
03:19:37 5 Doesn't say there was a meeting.

03:19:39 6 Q. I'll just point you to the subject of the
03:19:42 7 email.

03:19:42 8 A. All right. There was a meeting.

03:19:45 9 Q. And as far as you understand it, Mr. Kordestani
03:19:48 10 was unsuccessful in convincing Sheryl Sandberg to reduce
03:19:54 11 the rate of hiring from Google?

03:19:59 12 A. From reading that email, that would appear to
03:20:01 13 be the case.

03:20:04 14 Q. And then if you turn to the first page, it's an
03:20:07 15 email you wrote in which you describe your discussion
03:20:14 16 with Sheryl; is that right?

03:20:17 17 A. Yes. It appears to be my summary of the
03:20:20 18 previous document.

03:20:22 19 Q. Uh-huh. If you could look to the text that
03:20:28 20 starts after the second big redacted box.

03:20:33 21 A. Okay.

03:20:33 22 Q. That begins, "I did have a brief side dialogue"
03:20:36 23 and then ends with a parenthetical?

03:20:39 24 A. Yes.

03:20:39 25 Q. In the parenthetical you wrote that she, Sheryl

03:20:42 1 Sandberg, also saw Shona later that day at a dinner. Do
03:20:47 2 you see that?

03:20:48 3 A. Yes.

03:20:49 4 Q. Do you know whether Shona also had a
03:20:55 5 conversation with Sheryl Sandberg on this topic?

03:21:01 6 A. Seems odd that I would put that in a
03:21:03 7 parenthetical if I hadn't -- if I were not aware of some
03:21:08 8 discussion, but I don't recall.

03:21:12 9 Q. Okay. And at this time or shortly thereafter,
03:21:27 10 did Mr. Campbell support these efforts to seek a truce
03:21:32 11 with Facebook?

03:21:37 12 MR. RUBIN: Objection. Form.

03:21:37 13 THE WITNESS: I don't know.

03:21:49 14 MR. HARVEY: Q. If you could please look
03:21:50 15 at Exhibit 668.

03:22:05 16 A. Okay.

03:22:06 17 Q. And I'll note that this document -- just give
03:22:13 18 me one moment -- was written a few days after the prior
03:22:19 19 one.

03:22:24 20 If you go to the second email, did you write
03:22:26 21 that email to Bill Campbell, Rachel Whetstone and Omid
03:22:30 22 Kordestani?

03:22:31 23 A. Yes.

03:22:33 24 Q. And this is in response to Bill Campbell's
03:22:36 25 email in which he says, "Jonathan, who should contact

03:22:40 1 Sheryl (or Mark) and get a cease fire. We have to get a
03:22:44 2 truce." Correct?

03:22:45 3 A. Correct.

03:22:46 4 Q. Okay. And your response is, "Anybody BUT me!!!
03:22:50 5 That's a good job for brother Omid!"

03:22:52 6 A. Yes.

03:22:55 7 Q. And why did you suggest that brother Omid
03:22:58 8 should do it?

03:22:59 9 A. Because clearly I was not enjoying the
03:23:05 10 interactions with Sheryl on this subject, and I was
03:23:10 11 hoping that somebody else on the management team would
03:23:13 12 take the next steps.

03:23:16 13 Q. And then Bill Campbell responds, in all caps,
03:23:18 14 "YOU!"

03:23:21 15 Did you take any further steps after this to
03:23:26 16 seek a truce with Facebook?

03:23:30 17 MR. RUBIN: Objection. Form.

03:23:32 18 THE WITNESS: I don't know what transpired
03:23:34 19 after this. But if a threat existed where an action
03:23:38 20 needed to be taken and Bill Campbell indicated that I
03:23:40 21 was the next person to take the action, unless there is
03:23:44 22 some thread indicating to the contrary, I'm sure my next
03:23:51 23 step would be to follow up and do as Mr. Campbell
03:23:54 24 suggested.

03:23:56 25 MR. HARVEY: Q. Sitting here today, were

03:23:57 1 you ever successful in seeking a truce with

03:24:03 2 Facebook?

03:24:06 3 MR. RUBIN: Objection. Form.

03:24:11 4 THE WITNESS: I don't believe I was ever

03:24:11 5 successful in getting Sheryl to modify the behavior, if

03:24:15 6 we define modifying the behavior as -- as changing the

03:24:22 7 practices in which they were engaged in previously

03:24:24 8 related to hiring Google employees.

03:24:33 9 MR. HARVEY: Q. Okay. This may be a good

03:24:40 10 time for a short break.

03:24:41 11 MR. RUBIN: Okay.

03:24:42 12 THE VIDEOGRAPHER: We are now off the record at

03:24:43 13 3:24.

03:24:48 14 (Recess taken.)

03:26:18 15 THE VIDEOGRAPHER: We are now on the record at

03:26:20 16 3:26. This is the end of video No. 2.

03:26:23 17 We are now off the record at 3:26.

03:27:41 18 (Recess taken.)

03:33:40 19 THE VIDEOGRAPHER: We are now on the record at

03:33:41 20 3:33. This is the beginning of video No. 3.

03:33:50 21 MR. HARVEY: Q. Did you ever discuss

03:33:52 22 potential agreements regarding restricting hiring

03:33:57 23 with anyone at Apple from 2004 through 2010?

03:34:05 24 A. Not that I recall.

03:34:10 25 Q. Did the topic of Google restricting recruiting

03:34:15 1 from Apple ever come up during any conversation you had
03:34:19 2 with anyone at Apple?

03:34:25 3 A. Not that I recall.

03:34:30 4 Q. Did the topic of Google restricting recruiting
03:34:34 5 from Intel ever come up during any conversation between
03:34:37 6 you and anyone at Intel?

03:34:41 7 A. Not that I recall.

03:34:51 8 Q. And aside from the communications we saw today,
03:34:57 9 did you ever have any communications with anyone at
03:35:00 10 Intuit regarding Google restricting its recruiting of
03:35:04 11 Intuit people?

03:35:11 12 A. It's quite plausible, but I don't recall. I
03:35:14 13 don't recall any specific conversations.

03:35:16 14 Q. And it's plausible because those conversations
03:35:20 15 may have happened with Bill Campbell?

03:35:22 16 A. They may have or they may have happened
03:35:23 17 directly with Intuit employees who got in touch with me
03:35:26 18 directly.

03:35:30 19 Q. Do you have anything in mind there, or do you
03:35:33 20 remember anything more about those possible
03:35:35 21 conversations?

03:35:35 22 A. No. Just that I had more -- more conversations
03:35:39 23 with Intel employees because I -- there were some
03:35:42 24 snares, we were talking about some marketing
03:35:46 25 relationships with them for small and medium sized

1 I, Gina V. Carbone, Certified Shorthand
2 Reporter licensed in the State of California, License
3 No. 8249, hereby certify that the deponent was by me
4 first duly sworn and the foregoing testimony was
5 reported by me and was thereafter transcribed with
6 computer-aided transcription; that the foregoing is a
7 full, complete, and true record of said proceedings.

8 I further certify that I am not of counsel or
9 attorney for either of any of the parties in the
10 foregoing proceeding and caption named or in any way
11 interested in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of
13 the original transcript will render the reporter's
14 certificates null and void.

15 In witness whereof, I have hereunto set my
16 hand this day: March 25, 2013.

17 _____ Reading and Signing was requested.

18 _____ Reading and Signing was waived.

19 ___X___ Reading and signing was not requested.

20

21

22

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